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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 118.

BENJAMIN DREYFUS, EMANUEL GOLDSTEIN, JACOB FROWENFELD AND JOHN J. WEGELIN, COPARTNERS, DOING BUSINESS AS B. DREYFUS & CO., APPELLANTS,

vs.

SOPHIA SEARLE, EXECUTRIX OF JOHN SEARLE, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED OCTOBER 17, 1884.

SUPREME COURT OF THE UNITED STATES.

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1 *Bill of Complaint.*

SOPHIA SEARLE, as Executrix of the Last Will and Testament of John Searle, Deceased, of the City and County of San Francisco, as Complainant, brings this her Bill

against

BENJAMIN DREYFUS, a Resident of Los Angeles County, California; Emanuel Goldstein and Jacob Frowenfeld, Residents of San Francisco, California, and John J. Weglein, a Resident of New York, Copartners doing Business as B. Dreyfus & Co., as Defendants.

To the honorable the justices of the circuit court of the United States for the ninth circuit within and for the district of California:

And thereupon your orator complains and says that on the 12th day of May, 1879, the said John Searle died at said city and county, leaving a last will and testament, by the terms of which will he devised and bequeathed all of his property, both real and per-

2 sonal, to the said Sophia Searle, and appointed her sole executrix of said last will and testament.

That on the 4th day of June, 1879, said last will and testament was duly admitted to probate in the probate court in and for the city and county of San Francisco, State of California, a court having jurisdiction thereof, and on said last date letters testamentary, with the said will annexed, were duly issued by said court to said Sophia Searle, who, on said last day, was by said court appointed executrix of the estate of said John Searle, deceased, and on said last day she duly qualified as such executrix, and ever since then has been and now is the duly appointed, qualified, and acting executrix of the estate of said John Searle, deceased.

That said Benjamin Dreyfus, Emanuel L. Goldstein, Jacob Frowenfeld, and John J. Weglein are, and ever since the 1st day of January, 1879, have been, copartners and doing business at said San Francisco under the firm name and style of B. Dreyfus & Co.

That heretofore, to wit, before the 11th day of July, 1865,

3 the said John Searle was the original and first discoverer and inventor of a certain new and useful invention, to wit, improved process of imparting age to wines.

That the same was a new and useful invention and was not known or used by others before the invention thereof by the said John Searle, and at the time of his application for a patent therefor had not been in public use or on sale nor abandoned.

That the said John Searle, being so as aforesaid the inventor thereof, on the 11th day of July, 1865, upon due application therefor, did obtain the letters patent of the United States of America for the said invention, granting and securing to him, his heirs, administrators, or assigns, for the full term of seventeen years from the 15th day of June, 1865, the full and exclusive right of making, constructing, using, and vending to others to be used, the said invention and improvement throughout the United States and Territories thereof.

Said letters patent were issued in due form of law under the seal of the Patent Office of the United States, and were signed by the

Secretary of the Interior and were countersigned by the Commissioner of Patents of the United States, and bore date the said
4 11th day of July, 1865, a description whereof and of said invention more fully appear in said letters patent; which said letters patent are in due form of law and are ready in court to be produced by the complainant, or a duly authenticated copy thereof.

That at the time of his death said John Searle was the owner of all the property in said letters patent, and all the property therein ever since has and now belongs to his said estate.

That prior to the issuance of said letters patent all proceedings were had and taken which were required to be had or taken previous to the issuance of letters patent granting special rights and liberties for new and useful inventions.

That the said John Searle and his said estate since the issuance of said letters patent have been in the exercise of the full and exclusive right and liberty so granted as aforesaid, and made, constructed, and used the said improvement so patented, and have had and maintained until the infringement hereinafter complained of exclusive possession of the said improvement and invention under and by virtue of said letters patent, and has never acquiesced in invasion or infringement of the rights granted by said letters patent.

5 And your orator further shows unto your honors that the respondents herein, having full knowledge of the premises and in violation of the exclusive right, liberty, and privilege in said letters patent as aforesaid and utterly disregarding the same, have, since the death of said John Searle and before the filing of this bill of complaint, without right or license so to do, at San Francisco, California, and within the jurisdiction of this honorable court, made, constructed, and used tanks or casks with pipes passing into and through them and introducing heat to the wine therein in the manner described in said letters patent and so secured as aforesaid.

And your orator alleges that the wine aged and sold by the respondents is so aged by a process which is an infringement of said letters patent, and was so aged by a process according to the invention therein described and thereby protected and secured as aforesaid, and contrary to law and the form of the statutes of the United States in such cases made and provided.

And your orator shows that she is informed and believes, and upon such information and belief alleges the fact to be, that
6 the respondents in this action intend to continue to infringe upon said letters patent and to unlawfully make, construct, and use said invention as they have already been doing.

Your orator further shows that she has requested the respondents to desist from the using of said invention and to account to your orator for the damages which said estate has sustained, but that the respondents refuse either so to desist or account.

And your orator further shows that said estate and your orator will be subject to great and irreparable injury unless she shall obtain from your honors the relief hereby sought.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief prayed hereby, and

may upon their several and respective corporal oaths and according to their best and utmost of their several and respective knowledge, remembrance, information, and belief full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by note hereinunder written they are respectfully required to answer—that is to say—

7 First. Whether the letters patent were issued by the United States, as in said bill of complaint stated and set forth.

Second. Whether the respondents have made, constructed, or used, or caused to be made, constructed, or used, since the 1st day of January, 1879, or are now using a process or invention similar to that described and claimed in the said letters patent; and, if they have, to what extent and wherein it differs from the process described in said letters patent, if at all.

And that the respondents may answer the premises and may be decreed to account for and pay over to your orator all such gains or profits as have or might have accrued *accrued* to them from the making or using of said process.

And your orator further prays that this honorable court assess or cause to be assessed the damages which said John Searle and his said estate have sustained by reason of the premises and the infringements herein complained of, and that the respondents be adjudged and decreed to pay over to your orator the damages so assessed.

And your orator further prays that the respondents herein, their agents, attorneys, servants, workmen, and employees, may be restrained by an injunction issuing out of this honorable court from making or using, or vending to others to be used, said process or invention so secured as aforesaid.

8 May it please your honors to grant unto your orator, not only a writ of injunction conformable to the prayer of this bill, but also the writ of subpœna, directed to the said Benjamin Dreyfus, Emanuel L. Goldstein, Jacob Frowenfeld, and John J. Weglein, commanding them to appear and answer this bill of complaint and to do and receive what to your honors shall seem meet.

And your orator will ever pray, &c.

JNO. H. DICKINSON,
Solicitor for Complainant.

W. E. LOVETT, *Of Counsel.*

Notarial Deposition.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Sophia Searle, being first duly sworn, deposes and says that she is the complainant in the foregoing-entitled case; that she has heard read the foregoing bill of complaint and knows the contents thereof, and that the same is true of her own knowledge, except as to those matters which are therein stated on information or belief, and as to those matters she believes it to be true.

SOPHIA SEARLE.

Subscribed and sworn to before me this 21 day of Dec., A. D. 1881.
[SEAL.] EDWIN CHATTIN,
Notary Public.

(Endorsed:) Bill of complaint. Filed 21 December, 1881. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

9 *Subpœna.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California. In Equity.

The President of the United States of America to Benjamin Dreyfus, a resident of Los Angeles county, California; Emanuel Goldstein and Jacob Frowenfeld, residents of San Francisco, California, and John J. Weglein, a resident of New York, copartners doing business as B. Dreyfus & Co., Greeting:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room in San Francisco, on the first Monday of February, A. D. 1882, to answer a bill of complaint exhibited against you in said court by Sophia Searle, as executrix of the last will and testament of John Searle, deceased, of the city and county of San Francisco, State of California, and to do and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty of five thousand dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of
10 the Supreme Court of the United States, this 21st day of December, in the year of our Lord one thousand eight hundred and eighty-one, and of our Independence the 106th.

[Seal of Circuit Court.]

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
Deputy Clerk.

Memorandum Pursuant to Rule 12, *Supreme Court U. S.*

You are hereby required to enter your appearance in the above suit on or before the first Monday of February next, A. D. —, at the clerk's office of said court pursuant to said bill; otherwise the said bill be taken *pro confesso*.

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE,
Deputy Clerk.

(Endorsed.) "Subpœna."

Marshal's Return.

OFFICE U. S. MARSHAL, DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 21st day of December, 1881, and on the 22nd day of December, 1881,
11 at the city and county of San Francisco, in this district, I personally served the same on Jacob Frowenfeld, one of the defendants herein named, by delivering to and leaving with said Frowenfeld personally an attested copy of this writ, and on the same day on Emanuel Goldstein, one of the defendants herein named, by delivering to and leaving with Mrs. Tilly Ackerman, his daughter and an adult member of his family, at his last usual place of abode, at No. 1423 Sutter street, in the city of San Francisco, in this district, an attested copy of this writ.

A. W. POOLE, *U. S. Marshal,*
By B. J. ACKERMAN, *Deputy.*

And I further certify that John J. Weglein, def'd't named, cannot, after diligent search, be found in my district, but I am informed and believe that he is a resident of the southern district of New York.

A. W. POOLE,
U. S. Marshal,
By C. H. MEAD, *D'p'ty.*

OFFICE U. S. MARSHAL, DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 22nd day of December, 1881, and, at the town of Anaheim, in Los Angeles county, in this district, on the 24th day of December, 1881, I
12 personally served the same on Benjamin Dreyfus, one of the defendants herein named, by delivering to and leaving with said Dreyfus personally an attested copy of this writ, &c., &c.

A. W. POOLE,
U. S. Marshal,
By J. D. DUNLAP, *Deputy.*

[Endorsed:] Filed 27th Dec., 1881. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'ty cl'k.

13 *Answer.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

SOPHIA SEARLE, Executrix, &c., *vs.* BENJAMIN DREYFUS *et al.*

Respondents, Benjamin Dreyfus, Emanuel Goldstein, Jacob Frowenfeld, and John J. Weglein, for answer to the bill of complaint of complainant herein, deny that before the 11th day of July, 1865, the said John Searle was the original or first discoverer or inventor of a certain new or useful invention, to wit, improved process of im-

parting age to wines, but respondents aver that said process has been in use since 1815, or thereabouts; that it was, prior to July 11, 1865, used by Nicholas Longworth, in Cincinnati; by Weile, Work & Co., in Lake Erie; by Jonas Blum, in New York, and was in use in France and other parts of Europe.

Respondents deny that the same was a new or useful invention or was not known or used by others before the alleged invention thereof by said John Searle, or at the time of his application for a patent had not been in public use.

14 Respondents have no information or belief upon the subject sufficient to enable them to answer, and upon that ground respondents deny that said John Searle, upon due application obtained letters patent for the said invention for the term of seventeen years from June 15th, 1865, granting or securing to him the exclusive right of making, constructing, using, or vending to others to be used, the said invention and improvement throughout the United States and Territories.

Respondents have no information or belief upon the subject sufficient to enable them to answer, and upon that ground respondents deny that at the time of his death said John Searle was the owner of all the property in said alleged letters patent, or that all the property therein belongs to his estate.

Respondents have no information or belief upon the subject sufficient to enable them to answer, and upon that ground respondents deny that prior to the alleged issuance of said alleged letters patent all proceedings were had or taken which were required by law to be had or taken previous to the issuance of letters patent granting special rights and liberties for new and useful inventions.

15 Respondents deny that said John Searle or his estate, since the alleged issuance of said alleged letters patent, have been in the exercise of the exclusive right or liberty so granted, or have made or constructed or used the said improvement, or have had or maintained exclusive possession of said improvement until the alleged infringement thereof by respondents, or have never acquiesced in invasion or infringement of the rights granted by said alleged letters patent.

Respondents deny that they have, since the death of said John Searle or at any time, in violation of the exclusive right, liberty, or privilege in said letters patent, or disregarding the same, or without right so to do, at San Francisco or elsewhere, or within the jurisdiction of this honorable court, made, constructed, or used tanks or casks with pipes passing into or through them or introducing heat into the wine therein in the manner described in said letters patent or secured by said letters patent.

Respondents deny that the wine aged or sold by the respondents is so aged by a process which is an infringement of said letters patent, or was so aged by a process according to the invention described in said letters patent or thereby protected or secured, or contrary to law or the form of the statutes of the United States in such cases made or provided.

16 Respondents deny that they intend to infringe upon said alleged letters patent or to unlawfully make or construct or use said invention, or that they are so doing.

The respondents, in answer to the first interrogatory annexed to said complaint, say they have never seen the letters patent referred to in interrogatory first, and therefore they cannot answer said interrogatory any fuller than is stated in the answer to complainant's bill herein.

In answer to the second interrogatory respondents say that they have not made or constructed or used, or caused to be made, constructed, or used, since the 1st day of January, 1879, or any other time, and are not now using a process or invention similar to that described in said letters patent, but they are using a different process whereby they impart age to wines.

Whereby respondents, having fully answered, pray to be dismissed hence with their costs.

FREIDERMICH & ACKERMAN,
Solicitors for Respondents.

17 STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Jacob Frowenfeldt, being duly sworn, deposes and says that he is one of the defendants in said action; that he has heard read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to those matters he verily believes it to be true.

JACOB FROWENFELD.

Subscribed and sworn to before me this 20 day of April, 1882.
[NOTARIAL SEAL.] GEO. T. KNOX,
Notary Public.

(Endorsed:) Answer. Service of a copy of the within answer admitted this 20th day of April, 1882. Jno. H. Dickinson, att'y for complainant. Filed 20th April, 1882. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

18 *Replication.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

SOPHIA SEARLE, Executrix, &c., *vs.* BENJAMIN DREYFUS *et al.*

The replication of Sophia Searle, executrix, complainant, to the answer of Benjamin Dreyfus, Emanuel Goldstein, Jacob Frowenfeld, and John J. Weglein, defendants.

This repliant, saving and reserving unto herself, now and at all times hereafter, all and all manner of benefit and advantages of exception which may be had or taken to the manifest insufficiencies

of the said answer, for replication thereunto, says that she will ever aver, maintain, and prove her said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby
19 well and *and* sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humby prays as in and by her said bill she has already prayed.

JNO. H. DICKINSON,
Solicitor for Complainant.

(Endorsed:) Replication of complainant. Service of copy of within replication admitted this first day of May, A. D. 1882. Freidermich & Ackerman, att'ys for def'ts. Filed May 1, 1882. L. S. B. Sawyer, clerk.

20 *Stipulation.*

In the U. S. Circuit Court, Ninth Circuit, District of California.

SOPHIA SEARLE, Executrix, Complainant,
vs.
B. DREYFUS *et al.*, Respondents.

It is hereby stipulated and agreed that respondents be permitted to amend their answer in the above-entitled action and they be allowed to file the annexed answer as their amended answer herein.

The replication now on file shall be deemed the replication to said amended answer and the testimony already taken shall be deemed taken under the pleadings as amended.

Dated Nov. 13, 1882.

JNO. H. DICKINSON,
Solicitor for Complainant.
NAPHTALY, FREIDENRICH & ACKERMAN,
Solicitors for Respondents.

21 (Endorsed:) Stipulation in regard to amended answer. Filed Nov'r 14, 1882. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y clerk.

22 *Amended Answer.*

In the Circuit Court of the United States, Ninth Circuit, within and for the District of California.

SOPHIA SEARLE, Executrix, &c., *vs.* BENJAMIN DREYFUS *et al.*

Respondents, Benjam. Dreyfus, Emanuel Goldstein, Jacob Frowenfeld, and John J. Weglein, for amended answer to the bill of

complaint of complainant herein, deny that before the 11th day of July, 1865, the said John Searle was the original or first discoverer or inventor of a certain new or useful invention, to wit, improved process for imparting age to wines, but respondents aver that said process has been in use since 1815, or thereabouts; that it was, prior to July 11, 1865, used by Nicholas Longworth, in Cincinnati; by Weile, Work & Co., in Lake Erie; by Jonas Blum, in New York, and was in use in France and other parts of Europe.

Respondents deny that the same was a new or useful invention or was not known or used by others before the alleged invention thereof by said John Searle, or at the time of his application for a patent had not been in public use.

23 Respondents have no information and *and* belief upon the subject sufficient to enable them to answer, and upon that ground respondents deny that said John Searle, upon due application, obtained letters patent for the said invention for the term of 17 years from June 15, 1865, granting or securing to him the exclusive right of making, constructing, using, or vending to others to be used, the said invention and improvement throughout the United States and Territories.

Respondents have no information or belief upon the subject sufficient to enable them to answer, and upon that ground respondents deny that at the time of his death said John Searle was the owner of all the property in said alleged letters patent, or that all the property therein belongs to his estate.

Respondents have no information or belief upon the subject sufficient to enable them to answer, and upon that ground respondents deny that prior to the alleged issuance of said alleged letters patent all proceedings were had or taken which were required by law to be had or taken previous to the issuance of letters patent granting special rights and liberties for new and useful inventions.

Respondents deny that said John Searle or his estate, since the alleged issuance of said alleged letters patent, have been in

24 the exercise of the exclusive right or liberty so granted, or have made or constructed or used the said improvement, or have had or maintained exclusive possession of said improvement until the alleged infringement thereof by respondents, or have never acquiesced in invasion or infringement upon the rights granted by said alleged letters patent.

Respondents deny that they have, since the death of said John Searle or at any time, in violation of the exclusive right, liberty, or privilege in said letters patent, or disregarding the same, or without right so to do, at San Francisco or elsewhere, or within the jurisdiction of this honorable court, made, constructed, or used tanks or casks with pipes passing into or through them or introducing heat to the wine therein in the manner described in said letters patent or secured by said letters patent.

Respondents deny that the wine aged or sold by the respondents is so aged by a process which is an infringement of said letters patent, or was so aged by a process according to the invention described in

said letters patent or thereby protected or secured, or contrary to law or the form of the statutes of the United States in such cases made and provided.

Respondents deny that they intend to infringe upon said alleged letters patent or to continue to infringe upon said letters patent
25 or to unlawfully make or construct or use said invention, or that they are so doing.

The respondents, in answer to the first interrogatory annexed to said complaint, say that they have never seen the letters patent referred to in interrogatory first, and therefore they cannot answer said interrogatory any fuller than is stated in their answer to complainant's bill herein.

In answer to the second interrogatory respondents say that they have not made or constructed or used, or caused to be made, constructed, or used, since the 1st day of January, 1879, or any other time, and are not now using a process or invention similar to that described in said letters patent, but they are using a different process whereby they impart age to wines.

For a further answer to the said complaint respondents aver that said alleged inventions and discoveries described and set forth in said letters patent were well known and in public use in the city and county of San Francisco, State of California, for more than two years prior to the date of the application by said John Searle, patentee for said letters patent; that the same was known and publicly used as aforesaid in the city and county of San Francisco by John Weiland, who resides at 236 Second street, in said city and county, and the same was so publicly used by him at 228 Second street.

That the same was known and publicly used as aforesaid in said city and county of San Francisco by Henry Ahrens, who re-
26 sides at No. 1420 Pine street, in said city and county.

That the same was known and publicly used as aforesaid in said city and county of San Francisco by Henry Vrooman, who resides at No. 800 Bush street, in said city and county.

Wherefore respondents pray to be dismissed hence with their costs.

NAPHTALY, FREIDENRICH & ACKERMAN,
Solicitors for Respondents.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

J. Frowenfeld, being duly sworn, deposes and says that he is one of the respondents in said action; that he has heard read the foregoing amended answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters he verily believes it to be true.

J. FROWENFELD.

Subscribed and sworn to before me this 13th day of November, 1882.

[NOTARIAL SEAL.] GEO. T. KNOX,
Notary Public.

27 (Endorsed:) Amended answer. Service of a copy of the within amended answer admitted this 13th day of November, 1882. Jno. H. Dickinson, att'y for plaintiff. Filed Nov'r 14th, 1882. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

28 *Interlocutory Decree.*

In the United States Circuit Court, District of California.

SOPHIA SEARLE, Executrix of the Estate of John Searle, Deceased, Complainant,
vs.
BENJAMIN DREYFUS, EMANUEL GOLDSTEIN, JACOB FROWENFELD, and JOHN J. WEGLEIN, Copartners Doing Business under Firm Name of B. Dreyfus & Co., Defendants. } No. 2694.

At a stated term of the circuit court fo- the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room thereof, in the city and county of San Francisco, on Monday, the 21st day of May, A. D. 1883.

Present: The Honorable Lorenzo Sawyer, circuit judge.

This cause having come on to be heard upon the bill of complaint herein, the answer of the defendants, the replication of the
29 complainant, and the proof, oral, documentary, and written, taken, and filed in said cause, and having been argued by counsel for the respective parties and submitted to the court for consideration and decision.

Now, therefore, on consideration thereof, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, as follows, to wit: That the letters patent of the United States of America, numbered 48728, granted and issued to John Searle, of San Francisco, on the 11th day of July, A. D. 1865, are good and valid in law; that the said John Searle was the first and original inventor of the "improved process for imparting age to wine" as described and claimed in said letters patent and in the specification thereto annexed, and that the estate of said John Searle is the exclusive owner of said letters patent.

That the defendants, Benjamin Dreyfus, Emanuel Goldstein, Jacob Frowenfeld, and John J. Weglein have infringed upon the said letters patent and upon the exclusive rights of the complainant under the same—that is to say, by treating and aging wine by the process described and claimed in said letters patent, as charged in the bill of complaint herein.

And it is further ordered, adjudged, and decreed that the
30 complainant do recover of the defendants, Benjamin Dreyfus, Emanuel Goldstein, Jacob Frowenfeld, and John J. Weglein,

the profits, gains, and advantages which the said defendants or either of them have received or made, or which have arisen or accrued to them or either of them from the said infringement of said letters patent No. 48728 by the aging of wines by said process as decribed in said letters patent; and it is further ordered, adjudged, and decreed that the said complainant do recover of and from said defendants, Benjamin Dreyfus, her costs and charges and disbursements in this suit to be taxed.

And it is further ordered, adjudged, and decreed that it be referred to S. C. Houghton, Esquire, the standing master in chancery of this court, residing in the city and county of San Francisco, district and State of California, to ascertain and take and state and report to this court an account of the number of gallons of wine made or manufactured or treated by said process by the defendants or either of them; also the profits, gains, and advantages which the said defendants or either of them have received, or which have arisen or accrued to them or either of them since the 12th day of May, A. D. 1879, from infringing the said exclusive right of the said complainant by the treatment of wine by said patented process.

31 And it is further ordered, adjudged, and decreed that the complainant, on such accounting, have the right to cause an examination of the defendants, Benjamin Dreyfus, Emanuel Goldstein, Jacob Frowenfeld, and John J. Weglein, and each of them and each of their servants, agents, workmen, and employees, or other witnesses as may be necessary to take said accounting, and also the production of the books, vouchers, and documents of which said defendants, Benjamin Dreyfus, Emanuel Goldstein, Jacob Frowenfeld, and John J. Weglein, and their and each of their servants, agents, workmen, or employees may be possessed, attend for such purpose before said master from time to time as such master shall direct.

LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Interlocutory decree. Filed and entered May 22, A. D. 1883. L. S. B. Sawyer, clerk; by J. F. O'Beirne, deputy clerk.

32 *Interlocutory Decree.*

In the United States Circuit Court, District of California.

SOPHIA SEARLE, Executrix of the Estate of John Searle, Deceased, Complainant, *vs.* BENJAMIN DREYFUS, EMANUEL GOLDSTEIN, JACOB FROWENFELD, and JOHN J. WEGLEIN, Copartners Doing Business under Firm Name of B. Dreyfus & Co., Defendants.	No. 2694.

At a stated term of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room thereof, in the city and county of San Francisco, on Monday, the 21st day of May, A. D. 1883.

Present: The Honorable Lorenzo Sawyer, circuit judge.

This issue having come on to be heard upon the bill of complaint herein, the answer of the defendants, the replication of the complainant, and the proofs, oral, documentary, and written, taken and filed in said cause, and having been argued by counsel for
33 the respective parties and submitted to the court for consideration and decision:

Now, therefore, on consideration thereof, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, as follows, to wit: That the letters patent of the United States of America numbered 48728, granted and issued to John Searle, of San Francisco, California, on the 11th day of July, A. D. 1865, are good and valid in law; that the said John Searle was the first and original inventor of the "improved process for imparting age to wine," as described and claimed in said letters patent and in the specifications thereto annexed, and that the estate of said John Searle is the exclusive owner of said letters patent; that the defendants, Benjamin Dreyfus, Emanuel Goldstein, Jacob Frowenfeld, and John J. Weglein, have infringed upon the said letters patent and upon the exclusive rights of the complainant under the same—that is to say, by treating and aging wine by the process described and claimed in said letters patent, as charged in the bill of complaint herein.

And it is further ordered, adjudged, and decreed that the complainant do recover of the defendants, Benjamin Dreyfus,
34 Emanuel Goldstein, Jacob Frowenfeld, and John J. Weglein, the profits, gains, and advantages which the said defendant or either of them have received or made, or which have arisen or accrued to them or either of them from the said infringement of said letters patent No. 48728 by the aging of wine by said process, as described in said letters patent; and it is further ordered, adjudged, and decreed that the said complainant do recover of and from said defendants, Benjamin Dreyfus, her costs and charges and disbursements in this suit to be taxed.

And it is further ordered, adjudged, and decreed that it be referred to S. C. Houghton, Esquire, the standing master in chancery of this court, residing in the city and county of San Francisco, district and State of California, to ascertain and take and state and report to this court an account of the number of gallons of wine made or manufactured or treated by said process by the defendants or either of them, and also the profits, gains, and advantages which the said defendants or either of them have received or which have arisen or accrued to them or either of them since the 12th day of May, A. D. 1879, from infringing the said exclusive right of the said complainant by the treatment of wine by said patented process.

And it is further ordered, adjudged, and decreed that the
35 complainant, on such accounting, have the right to cause an examination of the defendants, Benjamin Dreyfus, Emanuel Goldstein, Jacob Frowenfeld, and John J. Weglein, and each of them, and each of their servants, agents, workmen, and employees and other witnesses as may be necessary to take said accounting, and

also the production of the books, vouchers, and documents of which said defendants, Benjamin Dreyfus, Emanuel Goldstein, Jacob Frowenfeld, and John J. Weglein, and their and each of their servants, agents, workmen, or employees may be possessed, attend for such purposes before said master from time to time as such master shall direct.

(Signed) LORENZO SAWYER,
Circuit Judge.

Endorsed: Filed and entered May 22, A. D. 1883. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify the foregoing to be a full, true, and correct copy of an interlocutory decree filed and entered May 22, A. D. 1883, as the same appears of record in my office.

Attest my hand and seal of said circuit court this 17th day of March, A. D. 1884.

[The Seal of the Circuit Court, District of Cala.]

L. S. B. SAWYER, *Clerk,*
By F. D. MONCTON,
Deputy Clerk.

36 *Master's Report.*

In the Circuit Court of the United States for the Ninth Circuit in and for the District of California.

SOPHIA SEARLE, Executrix, &c., *vs.* BENJAMIN DREYFUS *et als.*

In the matter of the reference for accounting.

To the honorable the circuit court of the United States for the ninth circuit and district of California:

In pursuance of the decretal order of this honorable court filed and entered in the above-entitled cause on the 22nd day of May, 1883, directing the undersigned, a standing master in chancery of said court, "to ascertain and take and state and report to this court an account of the number of gallons of wine made or manufactured or treated by complainant's patented process by the defendants or either of them, and also the profits, gains, and advantages which the said defendant- or either of them have received or which have arisen or accrued to them or either of them since the 12th day of May, A. D. 1879, from infringing the exclusive rights of the complainant by the treatment of wine by said patented process,"

37 I, the said master, having been attended at several times by the counsel for the respective parties, and having taken the testimony of the several witnesses produced in this behalf, and hav-

ing examined the said testimony and the other evidence submitted, do report:

The complainant's patented invention is a process for converting white wine into sherry.

For some years after the patent was granted the invention was not put to any considerable practical use, although Searle, the patentee, treated by his process, at his residence, small quantities of wine, in one case making a quantity for respondents at as low a rate as seven and one-half cents a gallon. These early operations, however, are claimed by the complainant to have been chiefly experimental. On the 17th day of September, 1877, the patentee entered into a written contract with Isaac De Turk to prepare one hundred thousand gallons of sherry per year by the patented process for the price of fifteen cents per gallon, and, pursuant to said contract, the patentee rented a building and erected a plant for conducting the business on a commercial scale.

38 As a basis for determining the value of the advantages resulting to the infringers from their use of the patented invention, the complainant introduced the contract referred to, and at one time proposed to stand upon the proposition that a royalty or license fee was thereby established, but as the process was conducted under the contract at the expense of the patentee, the price agreed upon cannot be considered as a license fee paid by De Turk. Even if that were not so, the sale of a single license is not sufficient to establish a royalty.

Under the rule laid down in the case of Mowry *vs.* Whitney (14 Wall., 652), that the measure of damages for the respondents' infringement of the patented process is "the advantage which defendant derived from using the complainant's invention over what he had in using other processes then open to the public and adequate to enable him to obtain an equally beneficial result," evidence was then introduced as to the cost of producing sherry by several other processes, namely, the *estafu* or hot-air process, Kohler's modified *casa del sol* process, a natural or dry process described by Mr. De Turk, and a method pursued by the respondents by which they undertook

"to get a certain taste to the wine similar to 'sherry'" by the

39 addition to a mixture of wines of burnt sugar to give body and color, oil of almonds to impart flavor, and gelatine or isinglass for purifying. Sherry being white wine acted upon by age or submitted to a process which produces the effect which is produced by age, this method of respondents' cannot be said to produce, as compared with complainant's process, an equally beneficial result.

With reference to the dry process described by De Turk, he states it is too expensive for practical adoption in this country.

Although the method for converting white wine into sherry in a *casa del sol* or sun-house has been known and practiced in Europe for many years, it does not appear that the so-called *casa del sol* process of Mr. Kohler was ever in use before its adoption by him in 1880. His system was the result of limited information derived from one or two newspaper articles and from statements made by others,

combined with improvements suggested by his own extended experience and ingenuity. This, then, was not a known process open to the public at the time of the respondents' infringement.

Mr. De Turk testifies that, with a view of adopting it, he made as thorough an investigation in relation to the *estufa* process as could practically be made in this State, and became satisfied that the actual cost of producing sherry by that process would be too great to justify him in putting it into operation, amounting, according to his estimates, to nearly seventeen cents a gallon, an amount greater than the price which he paid Searle under the contract. The witness Scott constructed a building and a plant and commenced the production of sherry by the *estufa* process on a business scale, but found it so expensive that he was compelled to abandon it. His calculations show that the expense to him of producing eleven thousand five hundred gallons of sherry from sixteen thousand five hundred gallons of white wine amounted to upwards of twenty-six cents per gallon.

If, then, we are to institute a comparison such as is suggested by the rule laid down in Mowry *vs.* Whitney, above referred to, it would appear that, so far as the testimony shows, the least expensive mode of converting white wine into sherry which was open to the public or to the respondents during the period of the infringement was the *estufa* process, which would have involved an expense of at least sixteen and nine-tenths cents a gallon, while the expense by the Searle process would not exceed six and thirty-two one-hundredths cents per gallon, and in these calculations the figures most favorable to the respondents are taken.

While it is true that the contract between the patentee and De Turk does not establish a royalty or license fee, it may still furnish evidence of the value of the complainant's process, which, in the absence of an established license fee, may be resorted to in order to get the measure of damages. By this contract it was agreed that, for the price of fifteen cents a gallon, Searle should convert De Turk's white wine into sherry by the patented process, and if it is possible to determine how much of that price was consideration for the use of the process a fair basis may be laid for the purposes of this accounting.

Of course the price received was not all profit to Searle. The expense of conducting the process to De Turk, who has used it for two years, has been three and three-tenths cents per gallon; but, according to the data furnished by Curtis and the two sons of the patentee, the expense to the latter when operating under the contract was nearly double that rate.

Following are the items of cost to Searle in treating a batch of thirty-four thousand gallons of wine, occupying four months' time:

Interest on cost of plant ($3,682.53) for 4 months, @ 10 %	$147	28
Deterioration of tanks, estimating their life at 12 years, for 4 months = $\frac{1}{36}$ of their cost ($2,928.02), @ 10 %	81	33
Fuel	83	75

Rent 4 months, @ $80		320
Water		16
Labor, man 4 months, @ $50		200
Extra labor for putting wine into tanks		100
Evaporation, 6.13 % of 34,000 gallons = 2,084 gallons, @ 50c.		1,042
Total expense		$1,990 36

This total expense, divided by the amount of sherry turned out—31,916 gallons—give as the cost per gallon for producing the sherry 6.23 cents.

Of the above items the largest in amount is that of evaporation, which constitutes more than one-half of the total expense. The testimony seems to imply that the intention of the parties to the contract was that De Turk should furnish one hundred thousand gallons of white wine per year for treatment, and that Searle should return to him the amount of sherry which resulted; and it would appear that the contract was carried out upon that basis. If that be so
43 the loss by evaporation would fall upon De Turk and not upon Searle, and would therefore form no part of the expense of the latter in conducting the process; but the testimony in this regard is not sufficiently full and explicit to annul the provision of the contract that De Turk was to deliver one hundred thousand gallons of white wine per year to Searle, who was to return an equal quantity of sherry after the treatment.

As under the provision referred to Searle was to deliver to De Turk one hundred thousand gallons per year of sherry the loss by evaporation is charged in the account at the rate of fifty cents per gallon, which is the value of the raw wine plus fifteen cents per gallon, the price to be paid for converting it into sherry.

With reference to the percentage of evaporation, John Searle, son of the patentee and superintendent of his sherry-producing works, testifies that the evaporation in the first batch treated under the contract was four and one-half per cent., and that after the first batch the evaporation did not at any time exceed three and one-half per cent. Curtis, however, gives as the percentage of evaporation and wastage in the first batch six and thirteen one-hun-
44 dredths per cent. Even taking this latter statement as correct, it does not necessarily follow that after the difficulties and disadvantages attending the initial operations of the process were overcome and the business was in good working order the percentage of evaporation was so great. De Turk states that the evaporation resulting from his production of sherry by the same process amounts to about four per cent., and it is highly probable that the percentages given by him and by John Searle is sufficiently large to cover the loss from evaporation during the treatment under the contract; but as the burden is upon complainant to prove the advantage which the respondents have derived from the use of the patented process, and particularly in view of the question of exclusive use raised by the contract and hereinafter to be referred to, the

basis of calculation most favorable to the respondents under the testimony has been adopted, not only with respect to the item of evaporation, but throughout the accounting.

The above calculation gives as the net profits of the patentee under the contract 8.77 cents per gallon. This amount was clear profit to Searle, but it cannot, nevertheless, be all passed to the credit of the patent right.

45 Undoubtedly Searle would have been willing to grant to De Turk the right to use the patented process for a license-fee lower than the rate at which he would himself undertake the burdens and risks incident to carrying on the process as a business. Had Searle held no patent for his process, or had he engaged to convert De Turk's white wine into sherry by a process not patented, he certainly would not have been willing to do so at a price which represented the actual cost of conducting the business. A proper allowance must, therefore, be made for Searle's profits as a manufacturer, independent of his use of the patented process.

As to manufacturer's profits, De Turk, who has been for upwards of two years last past and still is using the Searle process, testifies that he would treat by that process wine to the amount of forty-eight thousand gallons (the quantity produced by the infringers) for five and one-half cents a gallon, of which sum three and one-half cents would cover the expenses, and the remainder, two cents a gallon, would be a satisfactory manufacturer's profit. Mr. Kohler, whose statements in this regard are rather loosely made, testifies that for treating wine by his modified *casa de sol* process

46 he would charge a somewhat higher percentage; but at the rate indicated by De Turk the manufacturer's profit of Searle in carrying out the contract would have amounted to about one hundred and seventy dollars per month, which would seem to be a sufficient allowance for such profit in a business requiring an investment of less than four thousand dollars capital, and which, when once under way, required very little attention except from employees.

Taking, then, fifteen cents per gallon as the price received, and deducting therefrom 6.23 cents per gallon, the cost to the patentee of conducting his process, and two cents per gallon manufacturer's profit, we find the value of the patented process, upon the basis of the contract referred to, supplemented by the testimony, to be 6.77 cents upon each gallon of wine produced.

By the terms of the contract referred to the patentee agreed, under a heavy penalty, to treat wine for no other party than De Turk during the continuance of the arrangement there entered into; and the respondents claim that this exclusive use of the process for treating De Turk's wine is such a material element in the consid-

47 eration which De Turk was to pay that its value must be determined and segregated from the value of the treatment of the wine in order that the value of the patented process may be established; but it is quite probable that the real consideration which moved Searle to devote the process to the treatment of De Turk's wine exclusively was the fact that the latter was to furnish for treatment as large a quantity of wine—one hundred thousand

gallons per year—as Searle, as a business proposition, felt justified in erecting works for or handling. De Turk does not seem to have considered this exclusive use of any considerable value, as in his testimony he states that after investigating the matter he concluded it would be more advantageous and less expensive to him to pay Searle fifteen cents a gallon rather than to treat his wine himself by any method which he could adopt, and in this instance no reference is made to the question of exclusive use. At all events, the basis of calculation here adopted is believed to be sufficiently liberal to the respondents to include a just allowance for any value which can be attached to the element of exclusive use.

In a case of this character the establishment of a basis for the determination of the advantages which the respondents have
48 derived from the infringements of the rights secured to complainant by the patent is a matter attended with many difficulties, and, when in such a case a fair basis of calculation can be found, the complainant should be entitled to the benefit of it. The rate here fixed upon, it is believed, rests upon a substantial foundation deduced from the evidence, and it is certainly not so high a rate as to give to respondents ground for reasonable exception, as it is less than the rate paid by them for having a limited quantity of wine treated by the patentee, and much less, if Mr. De Turk's testimony may be relied upon, than they were willing to pay for the treatment of a larger quantity. Could the measure of damages be calculated upon a comparison of the advantages of the Searle and of the *estufa* process the respondents would be called upon to pay a heavy penalty for their infringement, but the testimony with reference to the *estufa* process is not as satisfying as it might be, as De Turk testifies in that regard from information, and Scott's was a first experience in a business altogether new to him, and therefore largely in the nature of an experiment.

It is but fair to call attention to the fact that the circumstances attending the infringement in this case are not such that the
49 respondents can equitably ask for a relaxation in their favor of the rule which entitles the patentee to compensation corresponding to the advantage gained by the infringer. The respondents had been aware of Mr. Searle's experiments and difficulties in perfecting his process. Before he commenced the use of his process upon a large scale they had had treated by him a limited quantity of wine with satisfactory results, and had negotiated for the treatment of a larger quantity before De Turk concluded his arrangement. They understood the process and knew its value. They were personally acquainted with members of the family of the deceased patentee who survived him and who were resident in this city, where the infringement was carried on. They had facilities for producing, and were and for years had been producing by another process, a wine which they sold as sherry.

Without attempting to gain the consent of the patentee's representatives, taking advantage of his experience, they erected works similar to those which he had constructed, and adopted the process which his inventive mind had devised and his experiments per-

fected, and they have unquestionably by their acts conclusively established the fact that the process was of value to them.
50 Under such circumstances it would seem most inequitable that the law of damages could be so construed as to exempt them from the payment to complainant of compensation for their unlawful use of the patented invention.

I therefore find and do report that the number of gallons of wine made or treated by respondents by the complainant's patented process is forty-eight thousand gallons, and that the profits, gains, and advantages which have arisen and accrued to the respondents since the 12th day of May, 1879, from infringing the exclusive right of complainant by the treatment of wine by the said patented process amount to three thousand two hundred and forty-nine dollars and sixty cents.

Respectfully submitted,

S. C. HOUGHTON, *Master*.

Accompanying the above report and as a part thereof are the testimony and exhibits introduced in this behalf.

51 FRIDAY, *July 6th*, 1883.

Present: Mr. Friedenrich, of counsel for respondent.

This day was, by stipulation of counsel, set for the examination of witnesses in this matter.

No appearance being made *of* behalf of complainant, at the request of respondents' counsel examination was continued to Wednesday, the 11th inst., at 11 o'clock a. m.

WEDNESDAY, *July 11th*, 1883.

Present: Mr. Friedenrich, solicitor, and Mr. Scrivner, of counsel, for respondent.

No appearance being made on behalf of complainant, the examination was further continued, at the request of counsel appearing, to Thursday, 19th inst., at 11 o'clock a. m.

52 THURSDAY, *July 19th*, 1883.

Further continued, by agreement of counsel, to a date to be agreed upon.

TUESDAY, *August 28th*, 1883.

Present: Mr. Dickinson, solicitor, and Mr. Boone, of counsel, for complainant; Mr. Friedenrich, solicitor, and Mr. McKinne, of counsel, for respondent.

Examination-in-Chief of Jacob Frowenfeld on Behalf of Complainant.

Mr. DICKINSON:

Q. 1. Immediately prior to the 15th day of June, 1882, you were a member of the firm of B. Dreyfus and Company, were you not?

A. Yes, sir.

53 Q. 2. For how long a time had you been a member of that firm?

A. Ten years.

Q. 3. What were your duties in connection with the business of the firm during the year next preceeding the 15th of June, 1882?

A. General duties, pertaining to any business.

Q. 4. During that year had the firm two offices?

A. Yes, sir; one at No. 17 Front St., and the factory or works at No. 630 Brannan street.

Q. 5. At which of the places were you usually?

A. Usually down town, at No. 17 Front Street.

Q. 6. Who had charge of the business at Brannan street?

A. Mr. E. L. Goldstein, a member of the firm.

Q. 7. Was it his business to be there all the time?

A. Yes sir.

Q. 8. At Brannan Street—is that where the tanks referred to in the testimony of this case were?

A. Yes, sir.

Q. 9. Mr. Goldstein had charge of the wine going in those tanks and coming out—supervision of it all?

A. He was a member of the firm there at the place.

Q. 10. What was about the quantity of wine put through those tanks?

54 A. I don't know.

Q. 11. Do you keep regular books of account for the firm?

A. Regular books of account are kept.

Q. 12. Do you know whether those books show the amount of wine received, and how it was disposed of by the firm?

A. No, sir; they do not.

Q. 13. Is there any account kept by any one showing the date and the amount of wine put into these tanks for any purpose?

A. No, sir.

Q. 14. Is there any account kept showing the date and quantity of wine that is drawn from the tanks?

A. No, sir.

Q. 15. Was there any wine put into those tanks during that year?

A. I am not prepared to state.

Q. 16. You do not know?

A. I do not know.

Q. 16½. Who should know?

A. I do not know.

Q. 17. How do you know that there is no account kept of the wine received and put into those tanks?

A. I simply know it.

Q. 18. How do you know it?

A. Because it is impossible.

55 Q. 19. Why?

A. Because we have got several hundred tanks there; the whole place is full of tanks and casks. If we should keep an account of what should go into each cask and is drawn out again we would have to have more than a dozen book-keepers.

Q. 20. Do you refer now to tanks or casks?

A. I do not know the difference between tanks or casks.

Q. 21. How long have you been in the wine business?

A. About 13 years.

Q. 22. And you do not know the difference between tanks and casks?

A. No, sir.

Q. 23. What I have referred to in my question as tanks, they are called by you as vats, are they not?

A. We call vats and tanks the same thing, and we do not distinguish them particularly by those names.

Q. 24. They are interchangeable terms, are they not?

A. Yes, sir.

Q. 25. Speaking of a specified vat or tank where wine is heated, you would just as likely call it a cask as a vat?

A. Yes, sir.

56 Q. 26. That is in accordance with the customs and usages of the business?

A. That is our custom down there. We sometimes refer to it as a cask or a vat or a tank.

Q. 27. How many vats, casks, or tanks are there in which these coils are?

A. Six.

Q. 28. What do you call those where these coils are?

A. We call them either one of those names—tanks or vats.

Q. 29. Do you know whether or not these were ever filled with wine?

A. Yes; they have been filled.

Q. 30. My questions refer now to the year preceeding the 15th of June, 1882.

A. Yes, sir; I know they were filled in that year.

Q. 30½. Do you know when these tanks were finished?

A. Some time in 1881.

Q. 31. Do you mean to say that the wine which went into those six tanks or any of them you had no account kept of it?

A. No account kept of it.

Q. 32. No account showing the amount or the quality?

A. No, sir.

Q. 33. And no account is kept of it when it is drawn off?

A. No, sir.

Q. 34. Or of the sales made of it?

57 A. No, sir.

Q. 35. Your books show the amount of sales made by the firm, do they?

A. They do.

Q. 36. You say your books will not show anything by which you can tell whether this particular wine drawn from these tanks was sold at any particular time or not; you cannot find out?

A. No, sir; we cannot find out from the books.

Q. 37. Did this wine after it was taken from these tanks go by the same name that it did before it went in?

A. By the same name.

Q. 38. By the same name before it went in?

A. It did not go by any name before it went in.

Q. 39. What wine did you put in those tanks?
A. White wine.
Q. 40. And when it was drawn from the tanks what did you call it then?
A. Sherry.
Q. 41. Do you mean to say that your books will not show what became of that sherry?
A. Oh, yes, sir; they will show all the sherry that we sold.
Q. 42. Did you obtain sherry from any other source except from these tanks?
A. Most decidedly.
Q. 43. Well, your books will show all the sherry you sold?
58 A. Yes, sir.
Q. 44. And your books will show the sherry you purchased?
A. We didn't purchase any.
Q. 45. You made all your sherry, then?
A. Yes, sir.
Q. 46. You understand that my question refers to that particular year?
A. I understand.
Q. 47. And during that period you bought no sherry?
A. Bought no sherry.
Q. 48. So that all the sherry that your books show as having been sold was made by your firm?
A. Yes, sir.
Q. 49. Is there a book here showing the sales?
A. No, sir; it is in the office.
Q. 50. What is the name of that book which shows these sales?
A. The sales book—general sales book—showing all sales.
Q. 51. You say there is no book showing the amount of white wine put into these tanks at any time?
A. There is not.
Q. 52. During the period of time that these tanks were not in operation, by what other means did you obtain sherry, if any?
59 A. From other casks by the same means as we obtain sherry before the tanks were put up. We have been selling sherry for 13 years, and we never bought any.
Q. 53. Were the coils used in any other but these six tanks?
A. No.
Q. 54. Was the heating process applied to any except these six tanks?
A. I think not.
Q. 55. Who had charge of all that department? Is Mr. Goldstein foreman and manager of it?
A. No; Mr. Frederick Pohndorff was cellar-man at that time.
Q. 56. You made no sherry by using heat at all except what was made in these tanks?
A. No.
Q. 57. And this sherry made by this heating process no separate account was kept of it?

A. About 13 years.

Q. 22. And you do not know the difference between tanks and casks?

A. No, sir.

Q. 23. What I have referred to in my question as tanks, they are called by you as vats, are they not?

A. We call vats and tanks the same thing, and we do not distinguish them particularly by those names.

Q. 24. They are interchangeable terms, are they not?

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A. No account kept of it.

Q. 32. No account showing the amount or the quality?

A. No, sir.

Q. 33. And no account is kept of it when it is drawn off?

A. No, sir.

Q. 34. Or of the sales made of it?

57 A. No, sir.

Q. 35. Your books show the amount of sales made by the firm, do they?

A. They do.

Q. 36. You say your books will not show anything by which you can tell whether this particular wine drawn from these tanks was sold at any particular time or not; you cannot find out?

A. No, sir; we cannot find out from the books.

Q. 37. Did this wine after it was taken from these tanks go by the same name that it did before it went in?

A. By the same name.

Q. 38. By the same name before it went in?

A. It did not go by any name before it went in.

Q. 39. What wine did you put in those tanks?

A. White wine.

Q. 40. And when it was drawn from the tanks what did you call it then?

A. Sherry.

Q. 41. Do you mean to say that your books will not show what became of that sherry?

A. Oh, yes, sir; they will show all the sherry that we sold.

Q. 42. Did you obtain sherry from any other source except from these tanks?

A. Most decidedly.

Q. 43. Well, your books will show all the sherry you sold?

58 A. Yes, sir.

Q. 44. And your books will show the sherry you purchased?

A. We didn't purchase any.

Q. 45. You made all your sherry, then?

A. Yes, sir.

Q. 46. You understand that my question refers to that particular year?

A. I understand.

Q. 47. And during that period you bought no sherry?

A. Bought no sherry.

Q. 48. So that all the sherry that your books show as having been sold was made by your firm?

A. Yes, sir.

Q. 49. Is there a book here showing the sales?

A. No, sir; it is in the office.

Q. 50. What is the name of that book which shows these sales?

A. The sales book—general sales book—showing all sales.

Q. 51. You say there is no book showing the amount of white wine put into these tanks at any time?

A. There is not.

Q. 52. During the period of time that these tanks were not in operation, by what other means did you obtain sherry, if any?

59 A. From other casks by the same means as we obtain sherry before the tanks were put up. We have been selling sherry for 13 years, and we never bought any.

Q. 53. Were the coils used in any other but these six tanks?

A. No.

Q. 54. Was the heating process applied to any except these six tanks?

A. I think not.

Q. 55. Who had charge of all that department? Is Mr. Goldstein foreman and manager of it?

A. No; Mr. Frederick Pohndorff was cellar-man at that time.

Q. 56. You made no sherry by using heat at all except what was made in these tanks?

A. No.

Q. 57. And this sherry made by this heating process no separate account was kept of it?

A. No; the same as other sherry.
Q. 58. Did it sell at the same price as other sherry?
A. I believe the same price.
Q. 59. Did you have other grades of sherry in your business?
A. No, one grade.
Q. 60. Did all the sherry you sold during this time sell at the same price?
A. The same price.
60 Q. 61. Was there any other but white wine put in these tanks during this period of time?
A. Not that I know of.
Q. 62. And was there any other kind of wine made in them except sherry?
A. I think not.
Q. 63. Or cured?
A. I think not.
Q. 64. Do you know where Mr. Pohndorff is now?
A. He is in St. Helena.
Q. 65. He was cellar-master on the 15th day of June, 1882, was he?
A. Yes, and had been for a year before that.
Q. 66. About what period of time was consumed by you in procuring the wine in these tanks at any time?
A. I do not know that.
Q. 67. You have had to rely on the cellar-man for that?
A. Entirely; it is a matter of observation, I suppose.
Q. 68. Was Mr. Pohndorff the party who superintended the working of these six tanks?
A. He had full charge of all pertaining to the wine-cellar.
Q. 69. It was his duty to attend to putting the wine in and to the process of drawing it off, and all that?
A. Yes, sir.
Q. 70. Did he have any assistance?
61 A. We had a number of hands in the establishment.
Q. 71. Who assisted him at this time?
A. I could not remember the names of our hands; he didn't do the work himself; he ordered it done.
Q. 72. Did he have Frederico Michel as his assistant?
A. We have such a man in our employ.
Q. 73. He is cellar-master now, is he not?
A. No, sir.
Q. 74. Was not Mr. Michel the assistant of Mr. Pohndorff at that time in the establishment?
A. No more than any other man in the establishment.
Q. 75. He did assist him—that is, he was under his orders?
A. Under his orders.
Q. 76. Who is your cellar-master now?
A. Mr. Nieman.
Q. 77. Was he there at the time Mr. Pohndorff was there?
A. No, sir.

Q. 78. You have a book showing the purchases and receipts of wine, have you not?

A. That is entered right up with the ledger.

62 *Demand for Books.*

(Complainant's solicitor demands the production at the next session of the following books of the respondents: Sales-book, time-book of the employees in the cellar department, cellar-master's book, and all other books showing sales and transactions of the firm between the 1st day of January, 1881, and the 15th day of June, 1882; also the books of the defendant showing the amount of wine purchased and received during the period referred to.)

(Continued by consent to Tuesday, Sept. 18th, at 11 o'clock a. m.)

TUESDAY, *Sept. 18th*, 1883.

Present: Mr. Dickinson, solicitor, and Mr. Boone, of counsel for complainant; Mr. Friedenrich, solicitor, and Mr. McKinne, of counsel for respondent.

63 *Examination-in-Chief of Frederic Pohndorff on Behalf of Complainant.*

Mr. DICKINSON:

Q. 1. What was your business during the year 1881 and down to the middle of June, 1882?

A. I was with the firm of B. Dreyfus & Company.

Q. 2. In what capacity?

A. A cellarer.

Q. 3. What was your duty—were you called cellar-master?

A. Not exactly cellar-master; there is a cellar-master there.

Q. 4. What duties did you perform?

A. Managing the interior, the cellar work of the house.

Q. 5. You were general manager?

A. Of that department; yes, sir.

Q. 6. Do you recollect the time that some tanks were built there in which coils were placed for the heating of wine?

A. I do not recollect the date.

Q. 7. Do you recollect of their being so placed there?

A. The fact I recollect; the date I do not know.

Q. 8. How many such tanks were there?

A. I think there were six; I am not certain.

Q. 9. What use was made of those tanks?

A. For mixing and heating sherries.

64 Q. 10. What do you mean be mixing?

A. Preparing.

Q. 11. What wine was used?

A. Whatever was suitable.

Q. 12. Was this all carried on under your supervision?

A. Yes, sir.

Q. 13. What account, if any, did you keep of the quantity of wine used in the tank?

A. My own pocket notes; probably no account.

Q. 14. Did you keep any memoranda?

A. For my own guidance; yes, sir.

Q. 15. Are you able from any memoranda or accounts to give the quantity of wine that was put through those tanks?

A. No; I did not preserve those memorandums.

Q. 16. What became of those memorandums?

A. They were pocket notes.

Q. 17. What became of those?

A. I destroyed them after the sherry was made.

Q. 18. How much would those wine tanks hold each?

A. I think we generally put in 3,800 gallons in each; one was not exactly of the same capacity as the other within a hundred gallons or so.

Q. 19. Do you mean that 3,800 gallons was the average of the six tanks?

A. Yes.

65 Q. 20. Were those tanks gauged?

A. No, sir; we measured in everything by gauged pipes.

Q. 21. When you say "we measured in everything" whom do you mean by "we?"

A. Our workmen—the workmen I had under me.

Q. 22. Everything was measured in?

A. Pumped in from casks that were gauged.

Q. 23. What was the object of that?

A. We wanted to know what amount we had in there.

Q. 24. Was any account kept of that?

A. I kept notes of that for my guidance.

Q. 25. Was that wholly for your own private use?

A. Yes, sir.

Q. 26. Did you not make any report of that to any member of the firm?

A. When a batch was ready I gave an account—about so many gallons of wine and the cost is about that much; that was all that was necessary.

Q. 27. To whom did you give this account?

A. I didn't give it; I simply told either Mr. Frowenfeld or the book-keeper. I showed him the notes and told him.

Q. 28. Did you give them any memoranda?

A. No, sir; it was never required to give an account of it;

66 it was simply for the satisfaction of the firm I mentioned it.

Q. 29. No account was made of it, as to the quantity?

A. I never used a pen in nearly all the time I was in the house; my notes were made with a pencil, just to know what I did, and after the batch was completed there was no object any more in preserving those notes.

Q. 30. Do you know whether Mr. Frowenfeld or the book-keeper made any memoranda of what you told them?

A. No; there was no need of it, because at the end of the year an inventory was taken and there was the wine which existed.

Q. 31. You say at the end of the year the inventory was taken?

A. Yes, sir; of the wines existing at that time.

Q. 32. Of all the wines in stock?

A. Of all the wines—sherry and port and whatever there was.

Q. 33. Sherry was not treated distinctly from the others that were there, particularly? This inventory would show the amount of sherry made and the amount of the different kinds of wines on hand?

A. All wines. At the end of the year—at the last days of the year—I took stock and gave that stock to the book-keeper.

Q. 34. That inventory would show the amount of sherry wine on hand?

67 A. Yes, sir; of all sherries, heated and not heated; there was no distinction made between one and the others.

Q. 35. Wine that was heated and went through these tanks—what was done with it after it was drawn? Was it stored?

A. No, sir; it was first cooled—cooled for months—and then it was cleared, clarified, and then it was used just as they thought proper for one customer or another. There was heated and unheated sherries, and there was no distinction made between them.

Q. 36. Could you, from this inventory and the sales-books, and so forth, determine how much there was of the heated sherry?

A. I have never seen the inventory of the house—that is, never have studied it. It has never been shown to me. I had nothing to do with that kind of work, so I could not tell you what the book-keeper is doing.

Q. 37. All you did was to make out the inventory of what was on hand?

A. Yes, sir; of all wines; taking stock.

Q. 38. How many times were these tanks filled during the time you were there?

A. I do not know. How can I keep that in my memory.

Q. 39. Do you recollect the manner in which they were filled—whether all at a time or all at once?

68 A. They were filled gradually as I found wines fit for that purpose.

Q. 40. You did not apply the heat until they were all filled?

A. Not before.

Q. 41. Did you apply the heat to each cask as it got full or to all when they were all filled?

A. When everything was ready then steam was let in.

Q. 42. Into one cask at a time or into six casks at once?

A. Into the six.

Q. 43. You did not run one of the six casks by itself at a time?

A. No.

Q. 44. When the heat was applied the whole six were in use?

A. The whole six.

Q. 45. In filling these tanks from time to time was there not a memorandum kept of the quantity of wine that was put into the tanks?

A. I made notes. After the thing was done and I knew what the cost was, if I was satisfied with that —. I had no archives for papers, and I simply tore them up.

Q. 46. Was this not reported to the house, and did they not make a memorandum of it?

A. No; there was no occasion for it. Whatever wines there
69 were there it was there. Whatever wines there were there at the end of the year there it was.

Q. 47. Was there any waste of wine in these tanks?

A. In what way?

Q. 48. Would there be any evaporation?

A. Yes, sir.

Q. 49. Or breakage?

A. No: we took care of that.

Q. 50. There would be some evaporation?

A. Yes, sir.

Q. 51. How would you account for that?

A. If you heat a liquid there is always evaporation.

Q. 52. In your inventory how was that accounted for?

A. I didn't bother about that; there was the wine of the house; what was shipped was shipped, and what was left was there.

Q. 53. There was no account kept showing the quantity of wine which evaporated?

A. No; why should it be; there it was.

Q. 54. How long was the heat applied to these tanks?

A. Something like three months.

Q. 55. Are you positive they were filled once during this period of time while you were there?

A. Yes; more than once.

Q. Are you positive of twice within that year and a half—
70 during the year 1881 and to the middle of June, 1882?

A. I would say heating three months and cooling perhaps two months, and then drawing off according as we would want it. I cannot tell you if the whole six was drawn twice, because we sometimes left the wine in some of the tanks and drew it off as we had occasion to. I cannot tell if the whole six were filled twice; perhaps they were; perhaps not.

Q. 57. If the tanks were completed about the first day of May, 1881, what is your opinion as to the number of times those tanks were filled prior to the 15th day of June, 1882—one year and a half?

A. I could not tell you, because some were left empty until we began again.

Q. 58. I understood you to testify that you did not apply the heat except to the whole six tanks at once?

A. Very well; but I mean after the wine cooled; we did not fill rapidly at once the whole lot of them. In three there may have been wine left of the former batch for a number of months—just as we had tanks below and puncheons to clarify it. I could not tell you how that was within that period.

Q. 59. Do you mean to say that you would apply the heat
71 to wine that had already been cured if it were left in the tanks?

A. I don't say that. I say if we had not room for the cooled wine

downstairs in vats we left one tank full, or more than one. They were only gradually filled as we had wines to put in. In the whole batch of six there was not exactly the same wine; it could not be.

Q. 60. How long after the tanks were finished before the heat was applied for the first time?

A. I cannot tell.

Q. 61. Very soon after?

A. After we knew that they had been made tight and in order, and after they had been cured first.

Q. 62. How long does it take to cure tanks?

A. I cannot tell you how long it has been.

Q. 63. Do you know of any one who would know?

A. No; how long it takes in general, do you mean?

Q. 64. Yes.

A. Say eight days or a fortnight—put soda in and wash them again. I cannot tell how long it has been with those tanks.

Q. 65. These tanks were cured and you then proceeded to fill them?

A. Yes, sir.

72 Mr. BOONE:

Q. 66. Do you know how long they were in there before they were filled?

A. Some time, because they had to be cleansed.

Q. 67. That would take probably eight or ten days?

A. To cleanse them, and then they had to be washed again.

Q. 68. It was about a month, was it not, after the tanks were put in there before they were filled the first time?

A. Something like that, but I am not certain about it.

Q. 69. It was not two months, was it?

A. If they were tight—if the cooper said they were ready—then we would begin filling.

Q. 70. Do you know whether there was any cooper work done on them after the tanks were placed in them?

A. Yes, sir, there was; the heads had to be renewed and it disturbed us for a good time; I recollect that.

Q. 71. After they were finished?

A. After the first batch had been fermented several new heads were put in.

Q. 72. Then, after those new heads had been put in, you put in a new batch and treated it, did you?

A. Yes, sir; but not at once.

Q. 73. Then there were two batches that you treated?

73 A. Yes; then there were two batches that we treated, but if that was within the period which you mentioned there, I do not know. Dates are not a matter which I keep in my mind.

Q. 74. When did you leave the employ of B. Dreyfus & Company?

A. August, 1882.

Q. 75. What character of wine did you treat in these tanks?

A. How can I describe that?

Q. 76. Well, what kind of wine was it; white wine, was it not?

A. Of course, white wine; for sherry you cannot use any except white wine.

Q. 77. Then you say it took about three months, do you, to treat it in these tanks?

A. The heating; yes, sir.

Q. 78. So you filled the tanks with white wine and applied the heat and left it three months, and then you had the cured wine; is that it?

A. No, sir; I cannot exactly give you an idea of the wines that constituted that, but it took a long time to get the wine together which did suit the whole lot to fill the whole batch. Sometimes, after we had put some in, it might have been 3 weeks before another batch came in, particularly when in came from Los Angles
74 county, that suited the purpose.

Q. 79. During all the time you were treating one batch you were receiving wine, were you not?

A. Wines were constantly coming in, and those which suited I put in.

Q. 80. If it took you three months to treat a batch of wine during that three months would you not receive sufficient to treat another batch before that first one cooled?

A. No, sir; not by far.

Q. 81. It took you three months to heat it and two months to cool it?

A. Yes, sir.

Q. 82. Did you cool wine in the same tanks?

A. Yes, sir.

Q. 83. Always?

A. Not necessarily always; sometimes part was taken down into tanks or vats below; out of two, a part might have been taken and the other was left up there.

Q. 84. Then sometimes you would withdraw the wine from a portion of tanks and cool it in other tanks?

A. Yes, sir.

C. 85. And you would leave some of the wine in the tanks to cool—in those tanks that it had been heated in?

A. Yes.

75 Q. 86. Then you could not commence another batch until you had removed the wine from all the tanks, could you?

A. Not the heating.

Q. 87. After the first batch of wine you found that the tanks were defective?

A. Only some heads needed repairing.

Q. 88. Then you had some new heads put in and then refilled them and run them again? Did you find anything wrong the second time?

A. I do not know.

Q. 89. You are sure that was the first time?

A. Yes, sir; I believe that it was. I know there was something wrong. The cooper knows better than I do.

Q. 90. You were constantly there, were you not?

A. Yes; but I had other things to do.

Q. 91. I understand; but you attended to the filling of these tanks with the wine and to the drawing of it?

A. Yes, sir.

Q. 92. After the first batch you know some treatment of the tanks had to be done?

A. Yes, sir.

Q. 93. After that do you know whether there was any difficulty with the tanks?

A. I do not know.

Q. 94. Was there any further fixing of the tanks after this first batch was treated?

76 A. I do not recollect. The foreman who attended to the taking of the temperature constantly might give a more determinate answer.

Q. 95. Is your memory as defective in all matters as it is in this?

A. Yes, sir; perhaps, in regard to trifles.

Q. 96. This is only a little more than a year ago. Cannot you recollect what occurred a year ago?

A. Things in which I have done my duty and given satisfaction I do not cram my memory with.

Q. 97. Was it not an important part of your business to know how many times you filled these tanks?

A. No, sir; there was a stock of something like 800,000 gallons of wine. What is a miserable 20,000 gallons of wine to be thought about at this time?

Q. 98. How many times during those eighteen months could you have treated wine in those tanks?

(Objected to by respondent and withdrawn.)

Q. 99. How many times could you have separately filled those tanks and treated the wine in the tanks between the first day of May, 1881, and the fifteenth day of June, 1882? How much could

77 you have treated if you had constantly kept them at work?

A. I might say twice, but I would not be positive, because I had to work up at the same time a considerable quantity of sherries not heated.

Q. 100. Between the first of May, 1881, and the 15th of June, 1882, would be thirteen months. You say it takes 3 months to heat a batch of wine—does it?

A. The heating—yes, sir; and the filling would take about two months.

Q. 101. We are talking now about the heating, leaving the filling out.

A. The heating, say 3 months.

Q. 102. If you had kept the tanks constantly at work treating wines by heating, how many batches could you have treated during that time?

(Objected to by respondent and withdrawn.)

Mr. DICKINSON:

Q. 103. How is the steam applied to these tanks?

A. From the steam-boiler, which is in the engine-room, close to the cooperage.

Q. 104. For what other purpose is steam used in that boiler?

A. For the lift—to work the lift, among other uses.

Q. 106. To work the elevator?

A. Yes, sir; and for other purposes. I do not know ex-
78 actly what.

Q. 106½. Was there a special engineer or man whose duty it was to attend to the application of steam to these tanks?

A. No, sir; the steaming of the sherry was not the principal object of that boiler.

Q. 107. I understand that, but was there any man whose duty it was to see to the application of the steam to these tanks?

A. Yes, sir.

Q. 108. Whose duty was that?

A. The cellar-master; he took the temperature.

Q. 109. Who was cellar-master under you?

A. Fritz Michel, who has been for a number of years in the house.

Q. 110. Did you keep notes of the amount of wine drawn from these tanks?

A. I may have kept them, but I do not possess any notes of an administration in which I have given satisfaction and in which I have no further responsibility. There was no book-keeping on my part; I simply kept notes in order to know what I was doing.

Q. 111. How much did it cost to treat this wine per gallon?

A. I never have made any calculation about that. Do you mean the heating?

Q. 112. To treat the wine by this operation.

79 A. The heating of it?

Q. 113. Yes, sir.

A. It is not much. I do not know how much.

Q. 114. When you say "not much," about how much would it be?

A. I cannot tell you. I made no particular distinction between the heated wine and the unheated wine. It may have been that it is worth two cents more than the unheated wine if it is well made. The heating is nothing; the quality of the wine is the thing. I do not know anything about the expense, but it cannot be much.

Q. 115. I understand you kept these accounts for the purpose of—

A. (Interrupting.) No, sir; I kept my notes. These wines go in and I ask, "How much do these wines cost?" and they say, "About so much." I made up my notes to know about what was the value. I kept notes like that, but not an exact account. There was no necessity for it.

Q. 116. Do you know whether there was any special market for this heated sherry wine, or whether it was sent to any special market—as to New York, for instance?

A. No distinction made; no, sir; not on our part; not on the part of B. Dreyfus and Company here.

Q. 117. Do you mean to say that all of the sherry wine, whether cured by this process or the other, was treated and appeared exactly alike upon the books just as sherry wine?

80 A. Yes; that is, I supposed it did. I never looked into the books of account of the house of B. Dreyfus and Company, because it was not my profession. I do not believe there was any great distinction made or any distinction made.

Q. 118. Was there any way by which you could determine how much of each kind of wine you had on hand?

A. I knew how many tanks there was wine in and how much they contained. I knew how many of those tanks contained wine.

Q. 119. Do you mean how many contained wine that had been heated, and how many contained wine that had been treated in the other way?

A. Both. I kept no account, but I just directed the drawing off from whatever place it happened.

Q. 120. You knew where the heated sherry was, didn't you?

A. Yes, sir; but as for keeping an account, no. I had no time for that.

Q. 121. How is this wine that had been put through these vats known to the house and to yourself—by what name?

A. By no name. Sherry we called it matured.

Q. 122. That which had been cured by the cold process, by what name did that go?

81 A. It didn't go by any particular name, except sherry. If I matured that by adding the other I called it matured sherry. I had to care for the safety of the wines; if I thought it safe to add part of the heated wine to the unheated sherry I did so. I do not recollect, of course, what was done. I tried to get the best material, and there was no distinction made on the part of the house between this heated sherry and that prepared by the other process.

Q. 123. Whose duty was it during this period of time to deliver wines sold?

A. The drayman's.

Q. 124. Did he go into the cellar to sell it?

A. No.

Q. 125. Who selected the wine?

A. The cellarer—the wine man.

Q. 126. Under whose instructions?

A. Under the instructions of the house.

Q. 127. Did you make a memorandum of the quantity of wine selected for any shipment as you selected it?

A. Yes, sir; of course; I gave the gauges.

Q. 128. To whom did you give them?

A. To the book-keeper.

Q. 129. Would those gauges show, if you sold sherry, what you sold for matured sherry and what you had sold for sherry cured by the cold process?

82 A. No. How could they? They could not.

Q. 130. Do you mean to say that in the sale of sherry wine

there was no distinction made in the price or any memoranda made as between the sherry cured in these tanks and the other sherry?

A. So far as I know there was not, but I did not trouble about the prices of wine.

Q. 131. And you gave the memorandums of the wine you had shipped?

A. Oh, yes; yes, sir.

Q. 132. You gave them to the book-keeper?

A. Yes.

Q. 133. Would that memorandum given by you to the book-keeper show which was matured sherry and which was the cold-process sherry?

A. No; if it was matured, matured it was called—that is to say, matured means a wine that I considered mature, whether produced by the cold or by the cold and heated added together; I made no distinction between them.

Q. 134. I understood you to say a little while ago that the wine that you treated by this heated process you called matured sherry and the wine you treated by the other process you simply called it sherry?

A. Yes; that is the way we called it in the cellar, between the cellar-master and myself.

Q. 135. You made that distinction?

83 A. Yes, between ourselves; and if a quantity of that was, in my opinion, a matured sherry, then it was called matured.

Q. 136. When about to ship wine you would receive instructions about the quantity of wine and the kind of wine, whether port or angelica or white wine?

A. Yes, sir.

Q. 137. Now, you would say all this wine was known as sherry wine?

A. Yes, sir.

Q. 138. And there was no other way of distinguishing the two kinds of sherry wine with reference to their manufacture?

A. No; I made no distinction, if any were made.

Q. 139. So that the book-keeper, from this memorandum of the wine shipped which was given to him, had nothing to indicate whether the sherry shipped by you was the matured sherry or whether it was the other sherry?

A. That was my work to attend to letting the wines go out sound and in condition, so as to please.

Q. 140. And it didn't make any difference to you which kind of sherry it was?

A. Never; I gave one no more preference than the other. Sometimes a preparation of sherry not heated was far superior to another which had been heated, in my opinion.

84 Q. 141. And they all sold for the same price?

A. I suppose.

Q. 142. And they were all shipped and handled exactly alike?

A. Yes, sir.

Q. 143. Then there was nothing to show how much had been treated by the heated process and how much by the other?

A. I do not know what accounts were kept by the book-keeper of the house.

Q. 144. You gave no accounts which indicate those things?

A. No, sir.

Q. 145. And you do not know how many times heat was applied to those tanks during that period?

A. No, sir.

Q. 146. Well, within the whole time you were there do you know?

A. I do not know if Fritz Michel can recollect it; otherwise he would not have known, because he noted nothing; all that was noted I noted.

By Mr. BOONE:

Q. 147. How was the other or cold sherry made?

A. How can I explain it to you how it was made; it was like the other, only the other is subjected to heat and this is not.

Q. 148. Can you tell what amount of cold sherry you made,
85 as compared with the heated sherry, while you were in the employ of B. Dreyfus and Company?

A. It is impossible to state quantities. With so many operations with all kinds of wines how can I keep that thing in my memory?

Q. 149. Had you ever treated wine by the heated process before these tanks were made which we have just been speaking of?

A. No, sir.

By Mr. FRIEDENRICH:

Q. 150. Mr. Pohndorff, when you say that you call the sherry cured by the heated process matured sherry, do you mean to say that sherry cured by the cold process is not, in your judgment, matured?

A. I do not make that distinction, because the sherry, if kept for the proper time and handled properly, is matured.

Q. 151. That was simply an arbitrary term which you applied?

A. That is all.

Q. 152. It did not indicate the merit of the wine, or that the other wine was not in such a condition as to be marketable?

A. No, sir.

Q. 153. You say you quit the employ of the defendants in August, 1882; have you been in their employ since then?

A. No, sir; we had sherry that we had on hand for two or
86 three years that was not prepared by the heating process that we called matured sherry.

By Mr. MCKINNE:

Q. 154. You had wine of that kind that you had not put any heated wine at all with, haven't you?

A. Yes, sir.

Q. 155. I would like to ask you whether, in your opinion, this Searle process benefits the wine?

A. It benefits a coarse wine and makes sherry of it; the oxidation of a delicate wine would injure it.

(Continued by consent to Wednesday, 26 inst., at 2 o'clock p. m.

WEDNESDAY, *September* 26, 1883.

Present: Mr. Dickinson, solicitor, and Mr. Boone, of counsel for complainant; Mr. Freidenrich, solicitor, and Mr. McKinne, of counsel for respondent.

Examination-in-Chief of Henry Sanders on Behalf of Complainant.

By Mr. DICKINSON:

Q. 1. You are the same person who testified before in this case as to having furnished certain copper coils to B. Dreyfus & Company, are you not?

87 A. Yes, sir.

Q. 2. Have you here with you your book, and from that can you state the date upon which you furnished those coils to that firm?

A. Yes, sir. (Produces journal and refers to page 278.) They were furnished to them March 21st, 1881. They entry is "March 21, 1881; Dreyfus & Co., 6 copper coils, at $27, $162.00."

Q. 3. Is there any charge in your books for work in connection with those coils for putting them in the tanks?

A. There is not.

Q. 4. Do you know whether at the time these coils were furnished they were put into the tanks by you or your employees?

A. I could not tell as to that. It might be that one of my men has been over there, but I could not say yes or no as to that.

Q. 5. March 21, 1881, was the date of the charge?

A. That is the date they were delivered—when we took them out there.

Q. 6. They were not paid for until some time after that, I suppose?

A. They were probably paid for in 60 days. I generally give 60 days.

By Mr. FREIDENRICH:

Q. 7. Did you put these coils in the tank yourself?

A. No; I did not.

Q. 8. The entry in your books show the date when the coils were sent to the wine cellar?

A. Yes, sir.

88 *Examination-in-Chief of Frederick Michel on Behalf of Complainant.*

By Mr. DICKINSON:

Q. 1. Were you in the employ of B. Dreyfus and Company during the year 1881 and down to July, 1882?

A. Yes, sir; I was there.

Q. 2. What was your business there?

A. All kinds of business.

Q. 3. Drove a dray—built the fires?

A. We have no dray. We have only inside cellar work.

Q. 4. You do the cellar work?

A. Yes, sir.

Q. 5. What was your duty in the cellar?

A. I did what I was called upon to do by the superintendent.

Q. 6. Do you know of any tanks in use during this period of time in which wine was heated by this steam?

A. Yes, sir.

Q. 7. How many tanks were there?

A. As far as I know, six tanks.

Q. 8. How many times were those tanks filled during that year and a half?

A. I cannot tell that; I do not know.

89 Q. 9. Was it a part of your duty to keep any record or memorandum in connection with anything you did?

A. No. Sometimes I have to draw off the steam.

Q. 10. Did you keep a memorandum of that?

A. No.

Q. 11. Did you keep a memorandum about anything?

A. No.

Q. 12. Never made any figures or wrote anything *thing* down?

A. No.

Q. 13. Were those tanks filled at all during this year and a half referred to?

A. I do not know for sure. I didn't have — memorandum for that.

Q. 14. You are not certain whether they were filled at all?

Ans. Not certain.

Q. 15. What did you turn the steam off for, then?

A. When the superintendent called me to do so I done it.

Q. 16. Did you handle any wines?

A. I handled wines if I got an order to do so in the cellar.

Q. 17. Did you handle any wines?

A. I handled wine there, of course.

Q. 18. Did you put, or cause to be put, any wine in these tanks at any time?

A. No, sir.

90 Q. 19. Did you at any time during this year and a half draw, or caused to be drawn, any wine from these tanks?

A. No; I did not draw any wine.

Q. 20. And you do not know whether any wine was ever put in those tanks or not during that year and a half?

A. Not for sure.

Q. 21. Did you test the temperature of the wine in those tanks at any time?

A. Yes, sir.

Q. 22. How often did you do that?

A. When the superintendent told me to do it.

Q. 23. How often did the superintendent tell you to do it?

A. I do not know for sure; I did not count it.

Q. 24. Did you ever see any wine in the tanks?

A. Yes; I saw some wine, but I do not know what kind.

Q. 25. Did you ever see wine in more than one of the tanks.

A. That is more than I can tell you. I have to do now in one second this work and in another second other work. I cannot remember all these things.

Q. 26. In testing the temperature of the wine how many casks did you test the temperature of?

91 A. Sometimes he says, "Go up and see a tank and bring the temperature," and I go up and do it.

Q. 27. How would he tell you to which tank to go—would he say number one or number two?

A. He says, "Go up on the tank;" that is what he says.

Q. 28. On all the tanks?

A. No, sir; he says, "Go up on this cask and see."

Q. 29. Were these six tanks numbered?

A. There was no numbers on it.

Q. 30. Where was the superintendent when he told you to go up on this tank?

A. He was around on the floor.

Q. 31. He would point out the particular tank that he wanted you to try the temperature of the wine?

A. Yes, sir.

Q. 32. Do you recollect when you first commenced to try the temperature?

A. No, sir; I do not.

Q. 33. Do you recollect when you stopped trying the temperature?

A. No.

Q. 34. Did you ever see any wine put in those tanks?

A. Yes, sir.

92 Q. 35. When?

A. I do not know when; that is hard to tell.

Q. 36. Have you seen any wine put into the tanks recently—within the last two or three months?

A. Maybe it is four months or so; I do not know for sure; cannot tell.

Q. 37. How long have you been in the cellar—employed there?

A. Since we moved; I worked out there and before I was down in the other cellar.

Q. 38. Do you know how long ago that is, that you moved out there?

A. I guess about three or four years; I do not know.

Q. 39. At the time when these tanks were built were there any tanks there in which steam was applied through the pipes?

A. Not as I know.

Q. 40. Do you know whether there were or not?

A. Not for sure.

Q. 41. Is there anybody there who would know?

A. I do not know.

Q. 42. What is your opinion upon that proposition? You have been there for some time; there is where you worked daily?

A. I do not think there was; not that I know.

93 Q. 43. Did you ever see any tanks before these six, where steam was applied in a similar way?

A. No.

Q. 44. Have you ever seen any since these six were built down there where steam was applied in the same way?

A. I have no interest in it. I have not looked for it.

Q. 45. Have you ever seen any such tanks since?

A. No.

Q. 46. When did you first see these tanks?

A. I cannot tell the date when I seen them first.

Q. 47. Well, about the time? I do not ask you to tell the date.

A. It is hard to tell the month. I think it was in the summer of 1881; but I am not sure.

Q. 48. Do you recollect when the tanks were being built?

A. I recollect when the coopers were there; yes, sir.

Q. 49. Do you recollect the coils being brought there and the connection being made with the boiler?

A. So many times mechanics working in the business about the machinery, and so forth, that I cannot recollect all these things.

94 Q. 50. Did you ever see any work similar to this before about these tanks, connecting the steam-pipes with these coils?

A. I—no place; no.

Q. 51. Did you ever see it done in this place, except this time?

A. No.

Q. 52. Do you recollect the fact of this connection of the steam-pipes with these coils and tanks having been made?

A. No.

Q. 53. Do you recollect the fact of a man being there doing some plumbing work?

A. I only recollect that coopers were there doing this work. For these other things I have no interest at all.

Q. 54. Who attended to the turning on of steam to these tanks?

A. Sometimes the engineer; and then, if the superintendent told me, I do it once in awhile.

Q. 55. Do you recollect the fact of these tanks being cleaned after they were finished—steamed out, cleaned out, or were they ever cleaned out at all?

A. I have nothing to do with this.

Q. 56. Were they ever cleaned out that you know of?

A. No. I do not know.

Q. 57. In your business there would you have observed it if these tanks had been cleaned or were being cleaned?

95 A. Of course; that was the superintendent's work. I had nothing to do with it.

Q. 58. The superintendent did the cleaning himself?

A. That is more than I know, if the superintendent did the cleaning himself or not.

Q. 59. Then you did not see these tanks steamed out or know of their being steamed out or cleaned and prepared to receive the wine?

A. No; I had nothing to do with it.

Q. 60. And you did not know anything about this being done at the time?

A. No; I had to work downstairs mostly.

Q. 61. Do you know about how long it was after these tanks were completed before wine was put in them?

A. No.

Q. 62. Was it four or five or six days, or a month or two months?

A. I do not know. I cannot tell.

Q. 63. Have you conversed with anybody about this case at any time?

A. No.

Q. 64. Or about what you would be called upon to testify to to-day?

A. No.

Q. 65. Did you know when you came here what you would be called upon to testify about?

96 A. I was told I would have to be a witness about the sherry; that is all.

Q. 66. Who told you?

A. Mr. Frowenfeld.

Q. 67. When did he tell you?

A. Mr. Frowenfeld told Mr. Allenberg through the telephone that I had to come here to-day, and he told me last night that I have to come here; that is all.

Q. 68. That is all he said about the case—that you would have to come here as a witness about the sherry?

A. Yes.

By Mr. BOONE:

Q. 69. Did you ever see any one put wine into those tanks?

A. I see one man once put it in.

Q. 70. Who was the man?

A. I do not know; there was so many men there I do not know who it was.

Q. 71. About when was that?

A. I do not know; I cannot tell you.

Q. 72. Is your memory as poor on everything else as it is in relation to these matters?

A. If you were working in such a business as I am you would not remember everything in the business.

Q. 73. (Q. 72 repeated.)

(No answer.)

97 *Examination-in-Chief of Charles Allenberg on Behalf of Complainant.*

By Mr. DICKINSON:

Q. 1. You are the book-keeper of Dreyfus & Company, are you not, and you were such during the year 1881 and the first half of 1882?

A. Yes, sir.

Q. 2. Mr. Pohndorff testified something about some memorandums as to wine that were passed to you—receipts and shipment of wine; what became of such memorandums?

A. Mr. Pohndorff often handed me slips of paper, received so much wine, so many cases of angelica, so many of port, and so on. I entered them in the book and threw the memorandum away.

Q. 3. In which book did you enter these?

A. Wine and brandy receipt-book. Mr. Curtis, gauger, generally gauged those packages, and his report came in in the same way. Of course I often copied from that report—Mr. Curtis' report.

Q. 4. These slips of paper would show the kind of wine?

A. Yes; and so would Mr. Curtis' gauger's report. The
98 packages are always marked what kind of wine is in them.

Q. 5. Were Mr. Curtis' reports on the same kind of slips of paper?

A. No, sir; that was a regular gauger's report.

Q. 6. Mr. Curtis, when gauging this wine, gauged that which was received, did he not?

A. Yes, sir.

Q. 7. Would he also gauge what was sold?

A. No.

Q. 8. Where would he obtain his information as to the wine—from an inspection of the casks?

A. Yes, sir; when a car-load comes in it is often marked on the batch how much there is in it. He often obtained it from me.

Q. 9. How did you obtain it?

A. From Mr. Dreyfus often. For instance, he would send a shipping receipt, and on the back he would say so many packages one kind, so many another kind, and so on.

Q. 10. Those shipping receipts or bills of lading would express the kinds of wine?

A. Yes, sir; sometimes he would overlook it.

Q. 11. So all the wine that came into the house during this period of time you were able to tell where it came from from these shipping receipts?

A. Yes, sir; I could tell the amount and the kind of wine.

Q. 12. You entered in your books the amounts and kinds of

99 wine received from these slips of paper and from this information from Mr. Dreyfus contained on the back of the shipping receipts?

A. Yes, sir.

Q. 13. Let me understand. I understand you destroyed these pieces of paper handed to you by Mr. Pohndorff?

A. Yes, sir. He handed me a little piece of paper—he would often put it on a little piece of envelope—and then I would put it on my book, and then Mr. Curtis would not gauge it. When the packages were gauged Mr. Curtis reported them, and I took them from his report. The others I took from these slips of paper that Mr. Pohndorff gave in.

Q. 14. You entered the reports of Mr. Curtis on the wine receipt-book, d'd you?

A. Yes, sir.

Q. 15. And did you also enter the memorandums of Mr. Pohndorff on the same book?

A. Yes, sir.

Q. 16. So this wine receipt-book would show all the wine received by Dreyfus & Company during this period of time.

A. Yes, sir.

Q. 17. The sale of wines—how was that accounted for to you as book-keeper—wines sold?

A. We would get, for instance, an order for a car-load or a barrel or two barrels of wine certain marks. Then the superin-
100 tendent would come in and tell me so many gallons had been shipped upon the order, and I would enter it in my sales-book. Sometimes I would go down myself and see how many gallons were ready to be shipped, and I would enter them in my book.

Q. 18. In what book was that entered?

A. Sales-book.

Q. 19. The sales-book would show the kinds and amounts of wine sold.

A. Yes, sir.

Q. 20. In this sales-book would there be anything to indicate the quality of any of the wine?

A. No, sir.

Q. 21. That would be indicated by the price, would it not?

A. No, not at all. Sometimes a person might want two grades of port or of claret, one at one price and one at another price. I might call them Zinfandel 1 and Zinfandel 2.

Q. 22. Would not that difference in price indicate a difference in quality?

A. I presume so. I don't know.

Q. 23. How was it in reference to sherry; was there any variation in the price of sherry during this time, that you recollect?

A. I could not recollect without looking at the book.

101 Q. 24. An inventory was taken at the end of 1881 or beginning of 1882, was there not?

A. Yes, sir.

Q. 25. That inventory showed the kinds and amounts on hand at the time?

A. Yes, sir.

Q. 26. And, comparing that with the former inventory and your books, you could determine the quantity of wine of any particular kind that you had disposed of during that year, could you not?

A. Of course, the books would show what kind of wine was disposed of.

Q. 27. And the quantity? For instance, if you had a hundred thousand gallons of claret on hand the first of the year 1881 and you had during that year received half a million gallons more, this inventory, taken at the end of the year 1881, and a comparison with the books would show the quantity that you had sold during the year 1881?

A. Yes, sir. Of course, there is always more or less evaporation.

Q. 28. You have the inventory made at the commencement of the year 1881 and also the one made at the end of the year 1881, have you not?

A. Yes, sir.

102 Q. 29. The books would show, also, to whom the wine had been sold, what disposition had been made of it?

A. The sales-book would show the various parties who had received wine from us, certainly.

Q. 30. Any wines—white wine, for instance—taken out from stock and manufactured into any other kind of wine, would not that also appear?

A. No, sir.

Q. 31. How do you account for that in your inventory?

A. We just find so much wine on hand of the different varieties and report it that way to the office; so many gallons of port, so many gallons of angelica, so many gallons of Riesling, or whatever it may be.

Q. 32. Suppose that you had at the commencement of the year 1881 one hundred thousand gallons of white wine; suppose that during the year you bought another hundred thousand, which would make two hundred thousand; suppose that at the end of the year you have got fifty thousand gallons of white wine and your sales-books shows that you have sold fifty thousand gallons, how would you account for the other hundred thousand?

103 A. I don't know; I would not attempt to account for it. If we haven't got sufficient there it might be lost. I could not account for it.

Q. Who makes this inventory?

A. The cellar-master always took the account of stock. In Mr. Pohndorff's time he always took it up himself.

Q. 34. Do you know, Mr. Allenberg—did it come under your observation at all—about the time these six tanks with copper coils in them were put in?

A. No, sir; I could not remember it. My place was in the office and I was very busy there generally, and I could not remember

when it was done. I would not be downstairs often, except for taking visitors around or something of that kind.

Q. 35. This wine receipt-book contains all the receipts of wine from every source?

A. Yes, sir.

Q. 36. And the sales-book contains all the wine that goes out?

A. All that goes out, yes. There is a little retail business downstairs, a very small item, and sometimes a little wine may go out in that way that I would not get any account of. There was not enough of that to amount to anything.

104 Q. 37. After receiving this inventory what did you do with it?

A. I put it into the inventory book.

Q. 38. Did you make any comparisons with the former inventories?

A. No, sir; they always stay there in the book where every year there is entered so much wine on hand.

Q. 39. Would you make any comparisons in order to arrive at your gains or losses during the year?

A. No; not in that way. I have never done so yet.

Q. 40. Did anybody do it?

A. I generally entered up the inventory in the inventory book, and figured up the value of it and made out a balance-sheet accordingly.

Q. 41. At what time do you take stock?

A. Generally the last of the year, December 31st; about that time.

Cross-examination of CHARLES ALLENBERG by Mr. FREIDENRICH:

Q. 1. Has Mr. Searle, who is now present, been at the office of Dreyfus & Company to examine your books?

A. Yes, sir; he was there twice.

105 Q. 2. When?

A. Day before yesterday and this morning.

Q. 3. And how long a time did he spend in examining the books?

A. Day before yesterday, I should estimate, about two hours, and this morning probably twenty or twenty-five minutes.

Q. 4. And he was allowed access to anything he desired to see?

A. Anything; yes.

Re-examination by Mr. DICKINSON:

Q. 1. The paper which I now show you is a memorandum made by Mr. Searle from the wine receipt-book of B. Dreyfus & Company, which shows the receipt between the 6th of April, 1881, and the 16th of June, 1881, of 28,623 gallons from Anaheim, marked "for sherry." The entries in the book do not show what kind of wine that was, whether white wine or other wine. How are you going to determine what kind of wine that was?

A. I don't know.

Q. 2. Can you do it except by your advices or by your invoices or by your shipping receipts?

A. (Witness shakes his head negatively.)

106 Q. 3. You have stated that your wine receipt-book shows the quantities and kinds of wine received?

A. Yes, sir.

Q. 4. The entry referred to shows this amount received "for sherry;" it does not show whether it is white wine or what it is. How are you to tell what kind of wine that was?

A. I only get my information from the shipping receipts. I don't know how it could be told.

Q. 5. Then, you are mistaken in saying that this wine receipt-book shows the kind of wine received?

A. I take the kind of wine and the amounts from the shipping receipts; that is exactly what it says on the books.

Q. 6. It does not say angelica or white wine?

A. No.

Q. 7. How can you find out what kind of wine it was?

A. I don't know.

Q. 8. What does this mean, "for sherry?"

A. I don't know; I know only that I put in the book what I find on the casks.

(Continued by agreement of counsel to Tuesday, October 2nd, 1883, at ten o'clock a. m.)

107 TUESDAY, *October* 2, 1883.

Present: Mr. Dickinson, complainant's solicitor; Mr. McKinne, of counsel for respondent.

Mr. Freidenrich telephones a request for a continuance, as he is engaged in the trial of a case in the superior court.

Continued by agreement of counsel present to Tuesday, 16th instant, at 10 o'clock a. m.

TUESDAY, *October 16th*, 1883.

Present: Mr. Dickinson, complainant's solicitor; Mr. Freidenrich, solicitor, and Mr. McKinne, of counsel for respondent.

(It is agreed by counsel for both complainant and respondent that the quantity of sherry wine cured by respondents, during the life of complainant's patent, by the complainant's patented process was forty-eight thousand gallons.)

108 *Examination-in-Chief of Isaac De Turk on Behalf of Complainant.*

By Mr. DICKINSON:

Q. 1. What is your business?

A. Farming and wine making, distilling, and so on.

Q. 2. Wine making to any large extent?

A. Yes; I have been engaged in the business pretty extensively; I have been engaged in the business of wine making since 1864, near Santa Rosa, in this State.

Q. 3. Are you acquainted with what is known as the Searle process for making sherry?

A. Yes, sir; I became acquainted with the process, through Mr. John Searle, the patentee of the process, in 1877.

Q. 4. Do you know what the value of that process was per gallon in connection with curing sherry?

A. Yes.

Q. 5. What was its value during the life of the patent which expired on the 15th of June, 1882?

A. Fifteen cents a gallon; that is what it was valued at.

Q. 6. Do you know the value of the process—what it was valued at—during that time?

109 A. Yes, sir; I do.

Q. 7. Now, what was its value?

A. Its value was fifteen cents a gallon.

Cross-examination of ISAAC DE TURK by Mr. FREIDENRICH:

Q. 1. Were you at any time in partnership with Mr. John Searle?

A. No, sir.

Q. 2. At no time?

A. At no time in partnership business.

Q. 3. Were you at any time interested with him in this patent?

A. Well, I suppose I was; I don't know, either, as I was; I can't say that I was. I don't know exactly how to answer that question.

Q. 4. Did you at any time have any arrangement with him in any way in regard to that process?

A. Yes, sir; I did.

Q. 5. When did you enter into that arrangement with him?

A. In 1877?

Q. 6. When in 1877?

110 A. I could not charge my memory with the particular date. Of course, I have papers on the same subject that I could refer to and tell.

Q. 7. About what time in 1877 did you enter into the arrangement with John Searle?

A. To the best of my recollection, it was somewhere about the beginning of the year, but what month I cannot say, and I am not certain it was at the beginning of the year, not having looked at those papers for some time.

Q. 8. How long did that arrangement continue?

A. I can't answer positively; I haven't got my *my* mind charged with it.

Q. 9. About how long did that arrangement continue?

A. It was for three years, I believe.

Q. 10. How long did it actually continue?

A. It continued until Mr. Searle's death, which was in April, 1879.

Q. 11. Did it not continue with his administratrix after his death?

A. It did.

Q. 12. Until what time did the arrangement continue with the successor in interest of John Searle?

A. I can't recollect exactly what time, but it continued after that until the expiration of the agreement, and I don't exactly
111 know the date of that. I would prefer that the agreement would be referred to, as I have not charged my memory with these dates.

Q. 13. Did you ever cure sherry prior to entering into that arrangement with Mr. Searle?

A. I did not—by no process.

Q. 14. Then you do not know what the expense of curing it by any other process was?

A. I don't positively know; I know from hearsay only.

Q. 15. In curing sherry by the Searle process did you or did Mr. Searle have charge of that part of the business?

A. Mr. Searle had charge of the process.

Q. 16. He had charge of the curing of the sherry under his process?

A. Yes, sir.

Q. 17. And that branch of the business was not under your supervision at all?

A. It was not.

Q. 18. And the expense of curing by that process you are unable to state, are you not; you could not state positively what the expense was?

A. I can state the expense it has been to me since I have got the process, at the present time; I don't know what his expense was; that I could not swear to. I know what my expense is in running the same process.

112 Q. 19. You are curing sherry now by the Searle process?

A. I am; yes, sir.

Q. 20. When you say that the value of this process is fifteen cents per gallon how do you arrive at that figure?

A. It enhances the value of the wine to that extent.

Q. 21. So that sherry cured by the Searle process is worth fifteen cents per gallon more than sherry cured by any other process?

A. I don't claim that; no. I claim that it has enhanced the value of the wine to that extent over its crude state when it goes into the process.

Q. 22. What kind of wine is it in its crude state?

A. It is what is commonly known to us as plain mission wine—white mission wine, and to be prepared for sherry it has to be fortified.

Q. 23. Do they use any different kinds of wine for making sherry by the Searle process from what they do for making sherry by any other process?

A. Well, I cannot say; the only kind of wines I made was mission wines; my understanding is that they can make sherry from two kinds of wines just as well; perhaps better.

113 Q. 24. It does not, then, depend on the process—whether it is the Searle process or any other; the wine from which sherry can be made is the same with all processes?

A. Yes, sir; in order to make sherry the wine must go through a sherry process, either the Searle process or some other process, which takes a very great length of time.

Q. 25. As I understand you, you say that the difference in value between wine in its crude state and the sherry after it is manufactured by the Searle process is fifteen cents a gallon?

A. Yes, sir.

Q. 26. Does that depend upon whether it is manufactured by the Searle process or any other process?

A. There is no other processes that has equal claims, perhaps. I don't know. I am not familiar with those processes. There is other processes to make sherry by.

Q. 27. Then if the wine cured was manufactured into sherry by any other process its additional value then would be fifteen cents a gallon, would it not?

A. If it was equally good; yes, sir.

Q. 28. So that when you say the value of curing sherry by the Searle process is fifteen cents a gallon you do not say that this fifteen cents is in addition to what it could be worth to cure it by any other process, do you?

114 A. No; I don't know of any other process—that is, I am not familiar with any other process for curing only as I have understood it from others. I have never treated wine by any other process, so I don't know how any other process will mature the wine; whether it is of equal value I could not say, as I have no personal experience or knowledge of the business.

Q. 29. How much more, if anything, is it worth to cure sherry by the Searle process over any other process?

A. Well, I can give you my idea of it; that is all I can speak of; I have not positive knowledge; I have never used any other process.

Q. 30. Then you do not know whether it is worth any more or not, do you?

A. I do not.

Q. 31. Don't you know there is sherry cured by other processes?

A. Yes, sir.

Q. 32. Don't you know that the sherry reaches as fine perfection by other processes as by Searle's?

A. No; I don't know it; I suppose it does, though. As I told you before, I have no positive knowledge of this.

115 Q. 33. Do you know that there is any difference in the price of the sherry manfactured by the Searle process from that of the sherry manufactured by any other process?

A. No; I cannot say that there is. There may be and may not be. I have no knowledge of it.

Re-examination of ISAAC DE TURK by Mr. DICKINSON:

Q. 1. You say you do not know how to answer the question as to whether or not you were interested in the patent. What did you mean by that?

A. I don't understand exactly whether he meant that I was inter-

ested in the patent or in the wine being treated. I was interested in the wine being treated, but whether or not I was interested in the patent I don't know.

Q. 2. Did you have any interest in the patent then?

A. Not during the time that that wine was being treated. Since that I have; I have had the process.

Q. 3. You entered into an agreement with Mr. Searle with regard to treating some wine, didn't you?

A. I did; yes, sir.

116 Q. 4. Is this the agreement, Exhibit D?

A. I recognize this as a duplicate agreement—the same as I have myself. That is my signature.

Q. 5. Were you ever interested in this patent in any other manner except under that agreement during Mr. Searle's lifetime?

A. No, sir.

Q. 6. At the time of Mr. Searle's death this agreement was existing between you and him regarding the patent?

A. Yes, sir.

Q. 7. After his death you used the arrangement continually until the expiration of the agreement?

A. No; I did not mean to say that it continued until the expiration of the agreement.

Q. 8. After his death what did you have to do with the administration with reference to this matter?

A. I had one lot of sherry put through, if my memory is right.

Q. 9. One lot put through afterwards or one lot finished that was in the process at the time of his death?

A. One lot finished. There was one lot in process of treatment at the time of Mr. Searle's death; I believe there was.

Q. 10. And that was finished up?

117 A. Yes, sir.

Q. 11. Then some time after that you produced the whole outfit—tanks, and all those things—did you not?

A. Yes, sir.

Q. 12. At the time when you made the arrangement with John Searle for the curing of the sherry, did you make inquiries and study up the question as to curing sherry—the different processes in use—in order to determine what you could do by other processes?

(Objected to by respondent as immaterial and incompetent. Objection overruled.)

(Ex. Respondent excepts.)

A. I did.

Q. 13. What processes did you find to be in use at that time?

A. There is a process of what they call baked sherry. I could not say what other name it has; but it is to mature and perfect the sherry by hot air, by furnace heat.

Q. 14. The estufa process?

A. I believe it is termed the estufa process sometimes, yes.

Q. 15. What other processes did you learn in relation to —?

118 A. There is no other process that I have learned anything about except the natural process; that is, of natural age.

Q. 16. You have been in the wine business since 1864?

A. Yes, sir.

Q. 17. During that time have you studied upon the question of wine making and curing and handling?

A. Yes, sir.

Q. 18. And you have been guided in the conduct of your business by the result of your studies and observations?

A. Yes, sir.

Q. 19. Do you or do you not understand the effect of these different processes and the manner in which they are conducted?

A. Yes, sir; I only understand the effect.

Q. 20. Do you understand the manner in which the estufa process is carried on?

A. Yes, sir; I do. I have never heard of it as yet, but I understand the process.

Q. 21. You have studied the different processes out, have you not?

A. Yes, sir.

Q. 22. And inquired and examined and posted yourself in connection with your interest in matters in connection with your wine business?

119 (Objected to by respondent as incompetent. Objection overruled.)

(Ex. Respondent excepts.)

A. I have.

Q. 23. State what you have done generally in acquiring knowledge on these matters.

A. I visited a place in St. Helena carried on by a man by the name of John Ramus, a Portugese. He had a place where he made his sherry by the Estufa process, or baking process. I seen his works, seen how he was carrying it on, and tested some of his sherries.

Q. 24. What was your object in visiting this place?

A. My object in visiting his place was to see how he was making his sherry, and what the result was, and what the expense was attached to his process of making it.

Q. 25. To what extent did you examine these works?

A. I examined the works and satisfied myself that it was more expensive than the Searle process and that it was more complicated.

Q. 26. What, if anything, do you know of the cold process?

A. I only know what I have read and a little that I have
120 observed. I have had wine get into a kind of sherry, you might say, by the cold process. It is a natural process—a natural consequence. I didn't make any attempt to make sherry wine, but it is known to all wine makers in this country that our mission wines turn into sherry if they are kept to a proper age and are kept from spoiling.

Q. 27. Do you know the average length of time it takes this mission wine to get into sherry by the natural process?

A. The wine I have reference to assumed a sherry type in about four years. It was not a full sherry yet, but it assumed a sherry type.

Q. 28. Was it as good as the sherry made by the Searle process?

A. It was not at that time; no.

Q. 29. Is there danger of this wine spoiling?

A. It is often the case that wine will flatten and sour by allowing it to lay in a hot place, which is required by the natural process.

Q. 30. Is that very much of a risk in connection with the process?

A. From reading, I should judge it was. I have got works on sherry that tell me that often half of the vintage is spoiled
121 while the other half is perfect and makes goods sherry. I have works on making sherry in various districts in Spain.

Q. 31. This sherry made by the cold process, then, would take about four years' time—on the average?

A. I think it would take longer to make a full and perfect wine; that is about the length of time I experimented or age of the wine that I had when it assumed the sherry type.

Q. 32. How with regard to evaporation by the cold process?

A. The evaporation is quite considerable; I should think — would amount to as much as three or four per cent. a year, anyhow; it shrinks about that much.

Q. 33. That would amount to twelve to sixteen per cent. if it could be cured in four years?

A. Yes, sir.

Q. 34. The Estufa process you described in your testimony taken here before, did you not?

A. I think not; if I remember right, I was not called upon as a witness in this case, was I? I have no recollection of describing the Estufa process.

122 Q. 35. Do you know what length of time it takes by the Estufa process to cure wine?

A. I only know from what I have been told.

Q. 36. After you had examined, as you testify, the Estufa process and the cold process, then you entered into this agreement with Mr. Searle?

A. Yes, sir.

Q. 37. Before or after you commenced your negotiations did you make these examinations?

A. I made those examinations before.

Q. 38. You made all those examinations before consulting with Mr. Searle, did you?

A. I don't remember whether it was before I consulted with him or not; it was about that time when I got acquainted with Mr. Searle.

Q. 39. Do you know the defendants in this case, or any of them?

A. Yes, sir.

Q. 40. About that time—the time of making your contract—did you have no conversation with any one of them as to the Searle process?

A. I had conversations with them after that. My acquaintance commenced about the time that I got acquainted with Mr. Searle. I got acquainted with the house of B. Dreyfus & Company about the same time.

123 Q. 41. With whom did you have any conversation?

A. More particularly with Mr. B. Dreyfus himself. I was better acquainted with him than any of the balance of the firm.

Q. 42. Did you have any conversation with him bearing on the value of this Searle patent?

A. I did; yes, sir.

Q. 43. What was that conversation?

A. Mr. B. Dreyfus and I had a conversation with relation to making the sherry, and he spoke very favorably—making sherry by the Searle process, I mean—and said that he had offered to enter into an arrangement with Mr. Searle for making sherry, but the amount he wanted to make was not as great as I would have made, so I got the process myself—that is, I got Mr. Searle to make wine for me by his process, as I offered to have more made for me per year than Mr. Dreyfus. The price, as I understood, was fifteen cents a gallon. Mr. Dreyfus said that fifty thousand gallons was all that he wanted to use and have made a year, and I would have one hundred thousand gallons made. That is why I had the preference.

Q. 44. What is the expense of making sherry by this Searle process?

124 A. The expense with me—my place is situated in Santa Rosa; my building I own myself, of course, and I cannot tell what a building like that would rent for. I can tell you the expense of hired help and the fuel that is required. I pay a man two dollars a day to run the boiler and attend to that part of the work, and my fuel costs me about two dollars a day. It takes one hundred and twenty days to make thirty-three or thirty-four thousand gallons. There are some other considerations. I am using steam generated from the same boiler for all my whole works, distilling, running the engine sometimes, and a steam-pump steaming out casks.

Q. 45. What is the percentage of evaporation?

A. It is about four per cent. of the amount.

Q. 46. Have you prepared an estimate of the cost per gallon of making sherry by this process?

A. I cannot say that I have an accurate estimate. It is so involved with my other business that I can hardly make an accurate estimate. The building I am using for a wine cellar, a distillery, and manufacturing place altogether.

125 Q. 47. Does this man do something else besides attend to?

A. He does, frequently; yes, sir.

Q. 48. What is the risk of spoiling this wine?

A. There is no risk attached to the Searle process of spoiling the wine, unless a tank should burst and the wine be lost.

Q. 49. At the time that you made this arrangement with reference to the Searle process, and before any of these other processes were patented, could you have used them?

A. I am not sure that they were patented.

Q. 50. To what extent have you been handling wines of all kinds during the past four or five years?

A. I have made wine, ranging from two to four hundred thousand gallons per year, for the last four years; previous to that vintage it was not so much.

Q. 51. How is the estufa process conducted?

A. By furnace heat.

Q. 52. How is the heat applied to the wine?

A. There is a furnace built in a room—for instance, like this—around the entire room made out of brick or stone; the furnace,
where the wood is put in, is on the outside, and then the wine
126 is stood inside in casks; some of them are two or three stories
high, and the wine is set up on each story. Usually the wine is in pipes, containing from one hundred and thirty to one hundred and sixty gallons each; the furnace is built completely around the room, so as to give as uniform a heat as possible all over the room.

Q. 53. How does the degree of heat in the Estufa process compare with that used in the Searle process?

A. I don't know.

Q. 54. What books or authorities upon the handling of sherry wine did you examine?

A. I have a book called "Facts on Sherry Making," by some English author; I cannot remember his name now; I have a work entitled "Thutecum and Du Prie on Wines and Grape Growing," &c. I have several works on the same matter, but I don't remember the names of the authors.

Q. 55. And you have examined those works carefully?

A. I have read them and examined them; yes, sir.

Q. 56. Do you know of any other place in this country where this Estufa process is used, except by this Portuguese that you have
mentioned?
127 A. I do; yes, sir. It was used by Mr. Scott at Healdsburg—I believe that is discontinued now—and Mr. Quitson at Geyserville, Sonoma county. There are some parties in Napa using it. Behrent & Brothers built a sherry-house for using the Estufa process, and there are several other houses there.

Q. 57. Did you ever examine any other works for making sherry by the Estufa process except the works of this Portuguese?

A. No; I have not.

By the MASTER:

Q. 58. Do you know what, if any, advantage could be gained by the use of the Searle process over and above the advantage to be gained from the use of any other process which was in use during the life of the Searle patent, and which these defendants had a right to adopt?

A. Yes; I claim that I know the advantage.

Mr. DICKINSON:

Q. 59. State those advantages.

A. One advantage in the Searle process over the Estufa process is in its less evaporation. As I stated before, as the evaporation of the

Searle process is about four per cent., and in the Estufa pro-
128 cess it is from fifteen to twenty per cent., the cooperage that is used in the Estufa process is often ruined in the first treatment, and seldom lasts more than the second. In the Searle process I don't know how long the tanks would last. Mr. Searle commenced using the casks that I have now in 1877, and they are still good, and have been in use most of the time since he had them made. There is another advantage also. In the Estufa process you have to have a building completely tight for the furnace heat, and in the Searle process most any building will answer the purpose that will shelter the tanks. It don't require such a complete structure. The result, so far as I can judge, is about the same in both cases. If anything, I prefer the wine made by the Searle process. The length of time is four months in the Searle process and six months in the Estufa process. I don't know about the fuel used in the Estufa process. I should judge there was not much difference there. If there is any difference it is against the Estufa process. It requires more heat to heat up a whole room, and as the heat is applied from the outside it must be more expensive. The amount of labor is about the same in each case. There is some repairing of the cooper-
129 age in the Estufa process. In the Searle process there is no repairing required, as a general thing. At least, I have not found that it is necessary to do much repairing.

Q. 60. For treating thirty-three thousand gallons of wine under the Searle process how many tanks do you use?

A. I use four tanks. Those tanks hold over eight thousand gallons apiece, about the same amount of space in the tanks that sherry put up in pipes would occupy.

Q. 61. Under the Estufa process this wine is put in pipes, as you have stated, that hold from one hundred and thirty to one hundred and sixty gallons each?

A. Yes, sir.

Q. 12. How with regard to the amount of labor required to keep the four tanks in order as compared with the amount of labor required to keep the number of pipes in order which would contain thirty thousand gallons?

A. It would require a great deal more vigilance to keep the pipes in order and so that they don't leak and to repair them than it would for the tanks. Mr. Ramus had about six thousand gallons in his building, and that took about the same amount of labor that it would to run our thirty thousand gallons. Whether he could run a larger amount as cheap as that I don't know. I don't think he could.

130 Q. 63. How about the filling and handling of the tanks under the two processes, the Searle process and the Estufa process—that is, the amount of labor required?

A. It requires more labor, of course, to handle so many small casks than it does to handle large tanks. Our tanks are stationary. We never move them, whereas in the other case the pipes are taken out and recoopered, those that are to be recoopered.

Mr. FREIDENRICH:

Q. 64. Have you ever ma nufactured any wine made by the Estufa process?

A. I have not.

Q. 65. Then, when you go on to describe the expense of manu facturing by the Estufa process do you mean to state that you know that of your own knowledge, by your personal experience, or from what some one else has told you?

A. I stated awhile ago that I satisfied my own mind in regard to the expense by inquiring into the Estufa process and reading of it.

Motion:

(Respondent moves to strike out the entire testimony of this witness in relation to the Estufa process, on the ground that such testimony is incompetent, as the witness has never manufactured wine by the process referred to, and has no personal experience or knowledge of the subject, and his testimony is purely hearsay.

131 Objection overruled.)

(Ex. Respondent excepts.)

Mr. FREIDENRICH: All questions hereafter to be asked this witness relating to the manufacturing of wine by the Estufa process will be taken subject to the objection that the testimony is incompetent upon the ground just stated in the motion to strike out.

(Recess until 3 o'clock p. m.)

132 TUESDAY, *October 16th*, 1883.

Afternoon session.

Present: Mr. Dickinson, solicitor, and Mr. Boone, of counsel for complainant; Mr. Freidenrich, solicitor, and Mr. McKinne, of counsel for respondent.

Mr. DICKINSON: We propose to stand upon the royalty which we claim to have established by the contract—Exhibit D—between De Turk and John Searle, deceased; upon the amount of wine treated by the process by defendant, as agreed upon in the stipulation entered into this morning, and upon the testimony hereafter to be taken, and we are willing to withdraw all testimony heretofore offered in the matter.

(Respondents subsequently declined to allow the testimony hereinbefore offered to be withdrawn, and complainant proceeded to examine Mr. De Turk as though no testimony of his had been taken in this matter.)

133 *Examination-in-Chief of Isaac De Turk on Behalf of Complainant.*

By Mr. DICKINSON:

Q. 1. What is your business?

A. I am a vintner, wine maker, and distiller.

Q. 2. Where is your place of business?

A. Santa Rosa, California.

Q. 3. How long have you been in that business?

A. I have been in the business of wine making since 1864; I have been in the business of grape growing, planting vineyards, since 1862, in this State, in the same place that I am in it now.

Q. 4. What experience have you had in treating wines by means of heating processes for converting ordinary wines into sherry?

A. I have had the experience of treating quite a considerable amount of wine by the Searle process with some tanks that Mr. Searle used at my place.

Q. 5. You do a large business, do you?

A. Yes, sir; I do a pretty fair business. The wine that I make amounts to about two or three hundred thousand gallons. I
134 think some years as high as three hundred thousand I have produced.

Q. 6. You produce wines of all kinds, do you?

A. Pretty much of all kinds of wines; yes, sir.

Q. 7. You say you have treated wines by this process of Mr. Searle's?

A. Yes, sir.

Q. 8. When?

A. I have been treating wines in that way for the last two years at my own place.

Q. 9. You knew Mr. John Searle during his lifetime, did you?

A. Yes, sir.

Q. 10. Did you have any business transactions with him in regard to the converting of wines by this process?

A. Yes, sir.

Q. 11. How far back did those transactions extend?

A. The first commencement was in 1877. I entered into a contract to treat some of my wines for him.

Q. 12. Please examine the paper which I hand you—it is Exhibit D—and state what that paper is.

A. That is a contract which John Searle and I entered into in 1877, to which I have referred.

135 Q. 13. The conditions of this contract were stipulated, were they, on Mr. Searle's part?

A. They were.

Q. 14. He treated the amount of wine that he agreed to for you, did he?

A. Yes, sir.

Q. 15. And received the amount of royalty or the price stated in the contract?

A. Yes, sir.

Q. 16. Do you know whether Mr. Searle treated wine for any other price than that stated in the contract, Exhibit D?

A. I do not.

Q. 17. Do you know the defendants in this case, B. Dreyfus & Co.?

A. Yes, sir.

Q. 18. You know Mr. Dreyfus himself, do you not?

A. Yes, sir; I am acquainted with Mr. Dreyfus.

Q. 19. Do you know whether or not the complainant in this case or John Searle, during his lifetime, ever treated any wines for Mr. Dreyfus himself?

A. I know as well as anything without handling the wine. He treated some. I don't know how much; a small portion, perhaps. I saw some of the wine treated by Mr. Searle on Mr. Dreyfus' place.

We tested the wine there. Mr. Dreyfus was showing the
136 wine.

Q. 20. Do you know the price Mr. Dreyfus paid Mr. Searle for treating that wine?

A. No, sir; I do not; nor I do not know what quantity he treated at that time. I know he had some in his premises at that time.

Q. 21. Do you know whether or not Mr. Dreyfus ever made any offer to Mr. Searle to treat wine for him at any price?

A. Yes, sir.

Q. 22. State what that offer was.

A. Mr. Drefus himself told me that he offered Mr. Searle the price of 15 cents a gallon for treating fifty thousand gallons a year. I do not know how many years it should continue. I do not remember now.

Q. 23. Do you know, Mr. De Turk, what it costs per gallon to treat wine by the Searle process?

A. I could not answer the question very accurate. It will cost something like two cents a gallon—two and a half or three cents—somewhere along there. That is what it costs us there; somewhere along there; in the neighborhood of that. My works are so intermixed with each other that it is hard for me to segregate it.

137 Q. 24. Would it exceed two and a half cents per gallon?

A. I hardly think it would.

Q. 25. Would it exceed three cents a gallon?

A. No.

Q. 26. At the time that Mr. Dreyfus was showing this wine was that before or after you entered into this contract?

A. I think it was just after; I cannot say positively; it was about that time.

Cross-examination of ISAAC DE TURK:

By Mr. FREIDENRICH: Did you ever make sherry by any other process except the Searle process?

(Obj. Objected to by complainant as immaterial.)

A. No, sir.

Q. 2. For how long have you been making two or three hundred thousand gallons of wine per year?

A. Three years ago this vintage I made about three hundred thousand gallons, in the vintage of 1881; in 1882 I did not make so much.

Q. 3. Did you have any conversation with Mr. Dreyfus in
138 relation to this process before you entered into this contract with Mr. Searle?

A. I have no positive recollection that I had; it was about the time I got acquainted with Mr. Dreyfus.

Q. 4. Then the conversation to which you have alluded was subsequent to your entering into that contract, was it?

A. I think that it was.

Q. 5. Did you get acquainted with Mr. Dreyfus before you got acquainted with John Searle?

A. No, sir; I got acquainted with Mr. Searle before I got acquainted with Mr. Dreyfus.

Q. 6. How long had you known Mr. Searle before you had know-Mr. Dreyfus?

A. Not a great while; it was during the same year.

Q. 7. Then your acquaintance was but slight at the time you had this conversation with him that you mention?

A. My acquaintance with him had not been very long previous to that.

Q. 8. Where did you have the conversation with him that you testified to?

A. My recollection is that it was at his own place on Market St.

Q. Whereabouts on Market street?

139 A. I cannot tell you the number; it is where the house had their office and place of business at that time.

Q. 10. In what part of the building did you have the conversation?

A. In the basement; in the cellar.

Q. 11. Any one else present besides Mr. Dreyfus?

A. I do not remember that there was; I do not think there was.

Q. 12. Was John Searle present?

A. No, sir; I do not think he was.

Q. 13. What was the occasion of that conversation; what brought it about?

A. What brought it about was, we were speaking of him entering into the contract with Mr. Searle, and we were drinking some of the sherry Mr. Dreyfus had on hand at the time, and he said that Mr. Searle had been talking of having some wine made by the same process, and that he didn't wish to have so much made as I did; fifty thousand gallons a year was all that he considered he was justified in having made.

Q. 14. Did you tell him what the contract you had with Mr Searle was?

A. Yes, sir.

Q. 15. Then the conversation took place after the execution of this contract?

140 A. Yes, sir; that I remember, of course.

Q. 16. At about how long after that date?

A. It couldn't have been a great while; I do not remember just the length of time.

Q. 17. Was it a month or two months?

A. It might have been two or three months.

Q. 18. Was it in 1877 or 1878?

A. I am not positive in regard to that; my recollection is not very distinct.

Q. 19. Then it might have been in 1878 that you had this conversation with Mr. Dreyfus, might it not?

A. Well, yes, sir; it might.

Q. 20. Along in the spring of 1878?

A. I don't have no positive recollection about it; I know we talked in a general way on the subject.

Q. 21. You cannot tell, then, whether the conversation with Mr. Dreyfus occurred a month or two months or six months after you entered into the contract, can you?

A. No; I won't undertake to say whether it was one month or six months, but I am quite sure it was not six months.

Q. 22. And you are quite positive that he had some wine in his house at that time that had been cured by the Searle process?

A. Yes, sir.

141 Q. 23. You recollect taking a glass of that sherry with him at the establishment at that time?

A. Yes, sir.

Q. 24. Was there anything said in that conversation as to what you were paying to Mr. Searle for making the sherry for you?

A. Yes, sir; I think it was talked about; I am not certain. I know that both he and I understood what I was paying. He was conversant with my contract with Mr. Searle.

Q. 25. The fact that you were paying 15 cents a gallon was known to both of you at the time?

A. Yes, sir.

Q. 26. Mr. Dreyfus at the time?

A. Yes, sir.

Q. 27. Is that conversation very distinct in your mind at this time?

A. It is very distinct in my mind that he spoke of the process, and that very likely he would want to have wines treated.

Q. 28. Have you had any occasion to recall that conversation to your mind from that day to this?

A. Yes, sir.

Q. 29. How recently?

142 A. It was previous to Mr. Searle's death him and I talked about it.

Q. 30. And you say that in that conversation Mr. Dreyfus told you that he had offered Mr. Searle 15 cents per gallon for treating fifty thousand gallons for this year?

A. Yes, sir.

Q. 31. And you are very certain of that, are you?

A. I am.

Q. 32. Can you fix more definitely than you have the time when this conversation occurred?

A. No; I don't believe I can, not having charged my memory with it at all.

Q. 33. Mr. De Turk, after the death of John Searle and after the expiration of that contract, did you make any arrangement with the

executrix of the estate of John Searle whereby you obtained the right to manufacture sherry on that patent?

(Obj. Objected to on the ground that the executrix had no authority to make a contract.)

A. I made an arrangement with James Searle, the son of the executrix. I bought the tanks and the fixtures for making the sherry.

Q. 34. And continued right along to make sherry?

A. As soon as I could have them set up I continued right along to make sherry.

143 Q. 35. Before the expiration of the patent?

A. Yes, sir; I made some, I believe, before the expiration of the patent.

Q. 36. Did you buy the patent?

A. I don't know whether I bought the patent or not. I bought the tanks and the privilege of using them.

Q. 37. Did you buy the exclusive right to use them?

A. Yes, sir.

Q. 38. No one else had the right to use the process?

A. No, sir.

Q. 39. Have you any interest in this suit?

A. I have not.

Q. 40. Have you any interest in the amount that may be recovered in this case?

A. Not a cent.

Q. 41. If you had the exclusive right to use the patent right——

A. (Interrupting.) I may have an interest in an indirect way.

Q. 42. Have you an interest in an indirect way?

A. In an indirect way; I have an interest in the process—the privilege.

Q. 43. And the patent having been infringed by Dreyfus & Co., have you an interest in the amount recovered?

A. No.

144 Q. 44. Why not?

A. There is no stipulated interest between Mr. Searle and I, and I do not expect to recover anything whatever; never anything said about it. I never claimed any interest, and he never offered me any, except that he was to protect me in my manufacturing. That is all the interest.

Q. 45. Have you made any claim upon James Searle or his mother on account of the infringement of this patent by Dreyfus & Co.?

A. I have not.

Q. 46. When did you buy the exclusive right to manufacture this wine under that patent?

A. I think it was in the year 1880; I am not certain, though; I have got papers that would settle the date of that.

Q. 47. What time in the year?

A. I cannot say; I may be mistaken in the year.

Q. 48. Was that during the year 1881, and up to the time of the expiration of the contract in June, 1882, you had the exclusive right to use this process in this State?

A. Yes, sir.

Q. 49. And did Mr. Searle himself or the widow have any right to use it or sell it to any one else?

145 A. He had no right to sell it. I am not certain but what he did reserve a verbal right, or something of that kind, that if he wanted to he should use it. I know there was conversation to that effect, but I don't know whether there was anything entered into in regard to it. I don't remember that there was—that he might want to use it some time.

Q. 50. You say it was in 1880 you purchased the tanks. Where was Mr. Searle's establishment then?

A. I think it was upon Jackson street.

Q. 51. How many tanks were there in the establishment?

A. I purchased four tanks.

Q. 52. Those tanks had been originally put up by John Searle, had they not?

A. Yes, sir.

Q. 53. And all the machinery there had been put up by him?

A. Yes, sir.

Q. 54. And you purchased the tanks from the son or widow after the death of John Searle?

A. I purchased them from James Searle, the son of John Searle; my business transactions were with him.

Q. 55. Do you remember what you paid for them?

146 A. Yes, sir; I remember what I was to pay him for it.

Q. 56. What did you pay him for it?

A. Six and a half cents a gallon for the cooperage.

Q. 57. For the privilege of what?

A. For the privilege of making sherry under that process.

Q. 58. Did you pay anything else to him?

A. No, sir; I am still in debt to Mr. Searle's son; there is an unsettled account between us.

Q. 59. In debt for the tanks?

A. For the cooperage; yes, sir.

Q. 60. Did you pay anything for the privilege of using the process?

A. Yes, sir; I consider I paid something—well, I don't know as I paid anything. I bought his tanks and the privilege of making the sherry.

Q. 61. You paid six and a half cents per gallon for the cooperage?

A. I think that is the amount; I would not be quite positive. It was a contract between us.

Q. 62. Have you paid, since the purchase of those tanks, anything at all as a royalty for the privilege of manufacturing sherry by that process?

147 A. No, sir.

Q. 63. Do you owe anything for the privilege of using the process?

A. I don't know whether you consider it paid for royalty or not. I paid six and a half cents for the tanks and fixtures knocked down as they were at that time.

Q. 64. And that carried with it the right to use the process?
A. All rights and privileges; yes, sir.
Q. 65. And that is all you were to pay?
A. Yes, sir.
Q. 66. That contract was made in 1880, you say?
A. I am not certain as to the date. I think it was in 1880.
Q. 67. When you fix the cost of curing wine by this process at two and a half cents per gallon do you include anything for your labor in doing it?
A. Yes, sir.
Q. 68. I do not mean the labor that you pay for, but your own individual labor?
A. Well, no. I did not include anything for my own individual labor.
Q. 69. And do you include anything for the rental of the premises?
A. No; I did not.
Q. 70. You say you purchased four tanks from Mr. John Searle?
148 A. Yes, sir.
Q. 71. You have other tanks of similar quality and size in your house, have you not?
A. No, sir. I have other tanks, but not of similar size or quality. Those are oak tanks. I have a great many redwood tanks.
Q. 72. Then you do not know what the value of those oak tanks is now, do you?
A. No. I do not know positively.
Q. 73. You never bought any prior or subsequent to these?
A. No, sir; not that kind of tanks.

Redirect examination of ISAAC DE TURK by Mr. DICKINSON:

Q. 1. At the time that you made this purchase of tanks John Searle was then dead and had been dead for some year or more, had he not?
A. Yes, sir; over a year.
Q. 2. Where was this property at the time you purchased it?
A. The tanks, when I purchased them, were knocked down and in a warehouse that Mr. Searle had.
Q. 3. The Greenwich dock warehouse?
A. Yes, sir; somewhere down there.
149 Q. 4. They were there stowed away, were they not?
A. Yes, sir.
Q. 5. In addition to the tanks what did you buy at that time? Is there a list of all the property that you bought in this contract that you refer to?
A. Yes, sir; I think I have a list of it.
Q. 6. Where is that contract?
A. I have got it at home. I should have it there if I can find it. I guess I can find it.
Q. 7. From whom did you make the purchase from the estate of Mr. Searle?

A. I made it from Mr. James Searle.

Q. 8. Do you pretend to say that Mr. James Searle sold or made arrangement to — without that contract?

A. There was no further arrangement except that when I purchased the tanks I got permission from James Searle to make sherry by the Searle process.

Q. 9. Did you receive any written transfer or any writing in regard to the exclusive use of this patent that you speak of?

A. I cannot say so — certain, but I think there has — letters passed between Mr. Searle and I—papers of some kind.

Q. 10. To the effect that you were to have the exclusive use of this process?

150 A. I think he spoke about that. He reserved the right himself that of using the process—I have an indistinct recollection of something of that kind—not to sell to any one himself or permit any one else to use it.

Q. 11. Did he give you the right to sell to any one else?

A. No, sir.

Q. 12. What was the real consideration of his giving you the privilege to use the process?

A. There was no other consideration than the price I paid him for the tanks.

Q. 13. Which were at that time knocked down and stored away in a place different from the place where they were formally used?

A. Yes, sir.

Q. 14. Aside from the tanks, what other machinery did you get? Did you get the boiler that was up there?

A. No, sir; I did not get the boiler that was there. I got the pipe that was inside the tanks, some faucets, and some hose.

Q. 15. Do you know what it would cost to build such tanks as those at the time you made the purchase?

A. No, I could not say what it would cost; I didn't try to post myself on that.

Q. 16. Was not that all that was said with regard to the

151 patent as between you and James Searle, that he would not disturb you in the use of the patent?

(Obj. Objected to by complainant and withdrawn.)

Q. 17. Do you recollect now all that was said between you and James Searle during the negotiations about those tanks and the use of the patent?

A. I don't know as I can recollect all that was said, because we had frequent and quite lengthy conversations. I remember that I had permission to use the process with the tanks. That is all that interested me at the time.

Q. 18. You had permission to use the process and the tanks?

A. Yes, sir.

Q. 19. And you bought the tanks and received this permission?

A. Yes, sir.

Q. 20. What more was said about their use, if anything?

A. I have no recollection of anything particularly pertaining to the case.

Q. 21. What do you mean by your testimony where you say you were given the exclusive use of this process?

A. Well, Mr. Searle said that he would protect me in the use of the process; that he would not sell the process to any one
152 else—something to that effect.

Q. 22. That is what you understood, then, by the exclusive use of the process, that he would not sell the right to any one else?

A. That is what I understood, yes.

Q. 23. Did he sell the right to you to use the process in more of these tanks than you purchased from him?

A. He did not.

Q. 24. He sold you these tanks with the right to use this process in these tanks?

A. That is all the right I claimed. Yes; was to use those tanks.

Q. 25. And you understood that Mr. Searle would use the process himself?

A. My recollection is that Mr. Searle reserved the right to use the process for himself.

Q. 26. I understand you that he only gave you the right to use it in these tanks that he gave you?

A. Yes, sir.

Q. 27. Was any reason stated why he would not sell it to any one else?

A. Yes, sir; he stated that he expected, when the patent expired, to have it renewed, and he thought it was valuable, and he wanted to use it in the future.

Q. 28. Was he not to sell it?

A. No, sir.

153 Mr. BOONE:

Q. 29. Did you understand from that transaction that Mr. Searle had a right after the sale of those tanks to license or permit any other person to use the process in any other tanks?

A. I understood that he reserved the right for himself, but not for any one else. That was my understanding of it.

Mr. DICKINSON:

Q. 29. Was the conversation that you have given the conversation upon which you base that understanding?

A. As near as I can recollect, yes.

Mr. BOONE:

Q. 30. Simply a verbal license, was it—simply verbal—this transaction as to the license?

A. I do not remember exactly what letters passed between us. There were some letters passed between us at the time. They conveyed something like the idea that I have been telling you of. I had several times something to say to him. We had conversations

at different times about the tanks. I think we also had some correspondence. I disremember what the corresondence was or what the conversation might have been—only the main facts in the case. I have no positive recollection further than what I have stated.

154 I am not certain that there was a contract. What I had reference to was the correspondence. I don't know that there was a contract formally drawn up. If letters constitute the contract, there were letters.

Q. 31. Didn't you get a bill of sale of the tanks?

A. I don't hardly think I did. I have no recollection of a bill of sale.

Q. 32. Have you those letters at home?

A. I have only one that I have any recollection of, and that was in relation to setting up the tanks. I wrote to him that the tanks were very much warped and cost a great deal more than the ordinary cost of such tanks, and asked him in that letter if he was willing to defray the extra expense, as I had done extra cooperage, some extra staves, and he answered that he was willing to pay all extra expense that did not come into the natural process of setting up the tanks. That is all the correspondence that I remember of positively. The balance of it—I cannot exactly connect it with the correspondence or the conversation. And that letter I think I have got yet. I do not know whether there is anything further than that.

Q. 33. These conversations with regard to the use of the process, did they happen before you purchased the tanks?

155 A. During the purchasing of the tanks.

Q. 34. That price you paid for these tanks, do you know whether it was under or above what you could have purchased new tanks of that kind for?

A. I don't know as to that; I never purchased tanks of those dimensions or tanks of that material.

Mr. FREIDENRICH:

Q. 35. You used the Searle processes from the time you purchased the tanks right along, did you?

A. From the time I got them set up.

Q. 36. No interruption at all from Mr. Searle?

A. Yes, sir.

Q. 37. You have the tanks yet and have continued to use the process?

A. Yes, sir.

By the MASTER:

Q. 38. Will you state approximately the cost to you of the production of sherry by the Searle process in your establishment at the present time and in connection with your other business? Can you estimate what would be the cost of producing sherry by that process, providing there were no other business connected with this production?

A. The additional cost would be the cost of an additional building.

156 Q. 38. Does the man who attends to the making of sherry in these tanks attend to no other work but this?

A. Sometimes he does other work, but the principal part of his work is to attend to the boiler and engine.

Q. 39. Are those used for other purposes as well as for the production of sherry?

A. Yes; I use the boiler and engine for steam connections and for other purposes.

Q. 40. Suppose you were to make an exclusive business of producing sherry by this Searle process, what do you estimate it would cost per gallon to produce it?

A. About three cents a gallon; possibly less; I do not think it would exceed that.

Mr. BOONE:

Q. 41. I will ask you if your recollection is perfectly clear with regard to the conversation which you had with James Searle at the time you purchased those tanks—the conversation so far as it related to what you purchased?

A. My recollection is clear that I purchased the tanks and got them in my possession, and set them up and have been using them.

157 Q. 42. Is your recollection clear with regard to the conversation which you had with him at that time in relation to the license to use the patent process?

A. Well, yes; I have it fixed in my mind pretty clear that the purport of the conversation was that I could use the tanks, the process; and he reserved the right for himself to use the process, as I stated before. He attached a great deal of value to the patent, and if he didn't say he had made an application for a renewal of the patent he said he was going to; he reserved the right to use the process.

Q. 43. Do you recollect whether the agreement was that he was not to interfere with you, or that he would give you a license?

A. I am not sure about that; it satisfied me that I had a right to use the process.

Q. 44. Did you think that you had the right to grant anybody else the right to use the Searle process?

A. No, sir.

Q. 45. Did you consider that under that contract you had from Mr. Searle you had a right to build any other tanks and use the process in them?

A. No; I did not consider that I had any right to extend my privilege beyond the tanks I had.

158 Mr. FREIDENRICH:

Q. 46. Did you consider that you had the exclusive right to the use of the process, except that Mr. Searle could also use it?

A. Yes; I considered that.

Q. 47. That he had no right to sell it to any one else?
A. Not at the time that I was using it.

Mr. DICKINSON:

Q. 48. For what length of time did you consider that was the understanding?
A. I don't know that there was anything said about the length of time. It was fixed in my mind that the length of time included the period of time that the patent ran. If he got it renewed I don't know but we may have had another understanding. I know that that was what we talked about.

Mr. FREIDENRICH:

Q. 49. It was understood that he was not to use it during that period, was it not?
A. No; he reserved the right to use it himself. Of course, he intimated that he would not use it for the present; I understood that he would not use it for the present.

(Continued, by agreement of counsel, to to-morrow, 17th inst., at 11 o'clock a. m.)

159 WEDNESDAY, *October 17th*, 1883.

Present: Mr. Dickinson, solicitor, and Mr. Boone, of counsel, for the complainant; Mr. Freidenrich, solicitor, and Mr. McKinne, of counsel, for the respondent.

Redirect examination of ISAAC DE TURK continued by Mr. BOONE:

Q. 50. Do you know what other processes were in use during the years 1881 and 1882 for the treatment of wines, by which sherry was produced, besides the process of Mr. Searle?
A. Yes; there is the cold process and the Estufa process and the Searle process; those three processes.
Q. 51. You have investigated, have you, the methods in use by each of these three processes?
A. Yes, sir.
Q. 52. Do you understand fully the nature of the different processes?
A. I think I understand them sufficiently to say that I understand the practical part of them.
160 Q. 53. How have you acquired your knowledge of these processes?
A. By investigations and readings and by visiting the places where they manufactured wine by the Estufa process.
Q. 54. Had you any particular purpose in view when you made these investigations?
A. I had; yes, sir.
Q. 55. What was the purpose?
A. My purpose was to find out what was the cheapest and most satisfactory method of making the wine.

Q. 56. With what object in view?

A. With the object of making sherry wine myself.

Q. 57. Please state what the cold process consists in.

Mr. FREIDENRICH: Complainant's counsel stated yesterday on what they relied and that they would withdraw all the testimony heretofore taken in this matter, including the testimony of Mr. De Turk. This matter which counsel are now going into is a renewal of the same matters. If the complainant proposes again to go into the matters which were gone into upon the first examination of this witness, we withdraw our consent that the testimony heretofore given herein may be withdrawn.

161 Mr. BOONE: Then we withdraw the notice given yesterday morning, except what we would rely upon, and propose to examine this witness in regard to the profits and advantages to be derived from the use of the Searle process over and above any other process in use at the time of the infringement and that might have been adopted by the defendants.

Mr. FREIDENRICH: Before the witness is examined as to these other processes referred to I desire to ask him some questions.

Q. 58. Did you ever cure sherry before you ever cured it by the Searle process?

A. No, sir.

Q. 59. You never cured sherry by the cold or Estufa process before or after your use of the Searle process at any time?

A. No, sir.

Q. 60. Were you at any time in any establishment while sherry was being cured by the Estufa process?

A. Yes, sir.

Q. 61. Were you there at the beginning or the end of the process?

A. I was there during the process at one time, and then at the end of the process.

Q. 62. At what place?

A. At Ramus's place, near St. Helena.

162 Q. 63. What was the state of the wine the first time you were there?

A. It was then in the process of heating in the building.

Q. 64. You do not know how long it had been in this state, except from what had been told you by the proprietor, do you?

A. I do not; I had no other way of knowing it.

Q. 65. Were you at any time in any establishment while sherry was being cured by the cold process?

A. No, sir.

Q. 66. Then you have no practical knowledge of curing sherry either by the Estufa or the cold processes, have you?

A. I have never cured any by the processes; the knowledge I have acquired is from books and inquiry—good authorities.

Q. 67. You inquired of this party up at St. Helena, you say, and obtained the information that you obtained from inquiry from him, did you?

A. I obtained some of the information that I have acquired from him.

Q. 68. And you have read of the manner of curing sherry by the cold and Estufa processes?

A. Yes, sir.

163 Q. 69. In those books did they undertake to state the expense of curing by the cold process?

A. They did not.

Q. 70. What knowledge have you of the expense of curing sherry either by the cold or the Estufa process?

A. They do not directly give the expense; they do also give the expense in a general way, but in the cold process the loss sometimes is equal to one-half of the wine treated, though it is not necessarily always so.

Q. 71. Depending altogether on the character of the wine?

A. Depending on the character of the wine and the success of the process. It seems there is considerable chances taken in the cold process whether the wine will turn out wine or vinegar.

Obj. Mr. FREIDENRICH: I submit that the witness has not shown himself to be an expert; that it appears he has no practical knowledge of the cold or Estufa processes for making sherry, and, so far as acquiring information from reading books is concerned, his facilities for obtaining that knowledge are not superior to that of any other person who undertakes to read and become familiar

164 with the subject, and the books themselves upon that point would be the best evidence. There is nothing in the testimony of Mr. De Turk thus far which shows him to be so familiar with either of those other processes referred to as to entitle him to give his opinion as an expert in the case; for that reason we object to the question propounded to Mr. De Turk.

Mr. BOONE:

Q. 72. Now, please state the nature and extent of that investigation in regard to treating wine for the production of sherry. What I desire is to have you detail the research you made and what investigation you made, so we can understand just exactly the amount of information you have obtained and where you obtained it from.

A. I have obtained my information on the cold process from various authors that have written on the subject. I have the books. I cannot call to memory all of the books that I have. I have quite a number of books on wine. I satisfied myself in regard to the cold process by investigating the cold process in those works. I have no other information on the cold process except what I have read from books and got from Mr. John Searle, who had been in Portugal, where wine was made by that process. I had my

165 information in regard to the Estufa process by reading and visiting the place of Mr. Ramus. I have got a number of books treating on the subject. I remember the title of "Facts on Sherry," "Thradicum & Du Prey on Wine Making," an extensive work, "Redding on Wine Making"—I think he speaks of the sherry

process—and I have several other books treating on the subject of treating sherry by the Estufa process, and I have carefully read and studied all that they contain on these subjects. I found out by visiting the Ramus works that the Estufa process for making sherry is much more expensive.

Obj. Mr. FREIDENRICH (interrupting): I move to strike out the answer, for the reason that the answer of itself shows that the knowledge of the witness on the subject is derived from hearsay, and in that connection I will ask the witness some questions.

Q. 73. When you say that you found out these things do you not mean that they were told to you?

A. It was told to me and I also seen the works—looked through them.

By the MASTER:

Q. 74. Independent of what was told you, could you or not
166 determine by the examination and investigation which you made at those works, with any degree of accuracy, as to the cost of producing sherry by that process?

A. Yes; I could determine. I saw that the building had to be a stone building, well constructed, with a complete furnace inside, guarded against fires. I could see that the cooperage was exposed to extreme heat and liable to destruction. I could also see from that that the loss in evaporation must be great.

(Ex. Respondents except.)
(Respondents' objection overruled.)

Mr. BOONE:

Q. 75. Were you familiar with the Searle process at the time that you visited the Ramus works at St. Helena?

A. Yes, sir.

Mr. FREIDENRICH:

Q. 76. How long did you remain at the works upon the occasion of that visit?

A. I called upon him twice during that day. I called upon him early in the morning and staid perhaps an hour or two hours, and I called upon him again during the same day. The second time I did not remain very long.

Q. 77. About how long?

167 A. I suppose half an hour.

Q. 78. With whom did you converse while there in relation to this process?

A. Mr. Ramus.

Q. 79. Any one else?

A. No, sir.

Mr. BOONE:

Q. 80. Please describe the apparatus and requirements connected with treating wine by the cold process.

(Objected to by respondents on the ground that the witness had not been shown to be an expert. Objection overruled.)
(Ex. Respondent excepts.)

A. Wine treating by the cold process requires from 12 to 15 years to perfect the wine and make what we call a sherry, and in that process there is great risks, losing some time as much as one-half the wine, and sometimes it becomes flat and finally turns to vinegar.

Q. 81. It is not always necessary that there should be such a loss as that?

A. No, but that occurs sometimes.

Q. 82. State, if you can, how the process is accomplished.

A. The process is accomplished by laying the wine in a warm place in a large shed with a raft, so as to get as much natural
168 heat as possible, and it remains there quietly for a number of years—12 or 15 years. Then, in perfecting the wine, they also have what they call seed sherries for mixing with other wines to more complete the flavor and character of the wine. They keep old wines, which have sometimes the age of one hundred years, for mixing with the younger wines—wines of a higher character and higher flavor.

Q. 83. What is the extent of the evaporation which occurs during that treatment?

A. The extent of the evaporation must be about four per cent. per annum. A hundred-gallon package would shrink at least four gallons per annum. That would be a very ordinary shrinkage — all the wines.

Q. 84. Then if this process is kept up, say, 15 years, what would be the amount of evaporation?

A. It would be 45 gallons, according to that, in a hundred.

Q. 85. Can you state the cost of producing sherry wine by the cold process?

A. The cost in our country would be so great, counting interest on the investment, that it would eat up the wine completely. That is why it is impracticable in California and why it is not ever practiced.

Q. 86. In treating wine by the *Estufa* process what character of structure is necessary?

169 A. The structure requires to be of brick or stone—a good substantial building, with flues running around the inside of the building, inside of the room.

Q. 87. Could the process be practically accomplished in a wooden building?

A. I am satisfied it could not; there is too much danger of fire.

Q. 88. What amount of wine is ordinarily treated by the Searle process at each operation?

A. I have been treating thirty-three or thirty-four thousand gallons at each operation.

Q. 89. How many tanks did you use?

A. Four tanks.

Q. 90. Then in one treatment you can cure how many gallons of wine in those four tanks?

A. I treat about thirty-three thousand gallons. It is more when I put it in. There is some shrinkage.

Q. 91. What size of building is required to treat 34,000 gallons by the Searle process?

A. About 25 feet square and 14 feet high would hold the tanks that I have.

Q. 92. Of what would that building be constructed?

A. They can be constructed of wood, stone, or brick. Anything would serve so that it shelters the tanks; that is all that is necessary.

170 Q. 93. Can you state what would be the cost of an ordinary wooden building of the size such as is suitable for that process?

A. Yes; I can state near enough.

Mr. FREIDENRICH:

Q. 94. How can you state it?

A. I know it from the fact that I have been through the building. A building of that size, built out of redwood lumber, such as that in Santa Rosa, would cost about $800.

Q. 95. How many men would it take to look after the wine during the process, during the treatment by the Searle process?

A. I have but one man to look after mine.

Q. 96. Can you state what it would cost to fill the tanks for the Searle process for treating the wines?

A. It would cost me a steam-pump and a man to operate it. The same man that runs the engine operates the steam-pump, and I fill a tank in a day.

Q. 97. Can you give me an estimate of the cost of filling those tanks?

A. The cost would not be scarcely anything; it would not exceed $5, any way.

Q. 98. How long does it take to cure the wine by the Searle process?

171 A. We aim to keep the wine in the tanks for four months. That is the length of time we have the wine in. It is being heated for three months; sometimes over. That is just as we have the wine required.

Q. 99. You have to require the attention of this man during the four months, do you?

A. Yes, sir.

Q. 100. What would be the expense for labor for treating a batch of 34,000 gallons by the Searle process during those four months?

A. I have a man, say, 120 days, at two dollars a day. That would be $240.

Q. 101. What is the expense of the fuel necessary to treat 34,000 gallons by the Searle process?

A. I use a half a cord of wood per day, and that costs me $4 a cord. That would be $2 a day for the fuel, but, as I stated before, I wish to qualify myself there, as I am using steam for other purposes from the same boiler, and it couldn't hardly be considered as a legitimate expense for running this process alone.

Q. 102. How many days do you keep up the heat?

A. Ninety days.

Q. 103. Are there any other items of expense attending the
172 treatment of sherry by this process?

A. None that I can think of.

Q. 104. What do your tanks cost you?

A. Six and a half cents a gallon or six cents; I am not certain whether it was six cents or six and a half.

Q. 105. How long will a tank last in which sherry is treated by that process?

A. Those tanks have been used since 1877 and are as good as they ever were from all appearances.

Q. 106. Now, please state what the waste by evaporation is in the treatment of the wine by the Searle process.

A. I have not had any to exceed four per cent. during the entire treatment.

Q. 107. That is, you drew off in sherry within four per cent. of the amount of wine that you put in?

A. Yes, sir.

Q. 108. Is all this which you have testified to with regard to the Searle process a matter of conjecture or a matter of practical experience and experiment?

A. It is practical experience in my own works.

Q. 109. What size of structure would be required to treat the same kind of wine, say 34,000 gallons, by the Estufa process?

173 A. It would take 220 pipes, such as are ordinarily used for that purpose. Our pipes varies from 130 to 160 gallons. Take an average of them, and I suppose it would take about 220 casks.

Q. 110. What size of building would be required to contain those 220 casks?

A. The way they treat sherry in those casks they are stood up on end, and there is to be room for a man to work around, as they are in constant danger of springing leaks, and the building to work that amount should be at least 80 feet square and 8 feet high, constructed of brick or stone.

Q. 111. Have you calculated, and can you state the cost of such a structure?

A. Yes, sir; a structure of that size, built out of stone or brick, with a good flue through it, the whole building constructed in a workmanlike manner, would cost about $5,000.

Q. 112. What would be the cost of cooperage for the casks used in the Estufa process?

A. New pipes are worth six and a half cents to the gallon, and they last for two treatments.

Q. 113. What would then become of them?

A. They are considered worthless at the end of the two treatments. Some become worthless at the end of three treat-
174 ments, but the average become worthless at the end of two treatments for any purpose that I know of, except for fuel.

Q. 114. Then, after the casks have been used for two treatments by the Estufa process, in order to carry on the process to the third treatment you would have to have an entire new set of casks?

A. Yes, sir.

Q. 115. During the treatment by the Estufa process would the casks require any attention?

A. They would require constant attention.

Q. 116. By whom?

A. By the superintendent or man managing the works.

Q. 117. Does it require any skilled attention?

A. It requires skilled attention so that if anything is wanting. They have to repair—a man to make the necessary repairs. The casks often spring leaks; the hoops get loose.

Q. 118. Do they have to have a cooper to keep them in good condition?

A. To be safe, I would say yes.

Q. 119. What amount of labor—how many persons' labor—would it require at the minimum to treat 34,000 gallons of wine by the Estufa process?

175 A. It would take at least two men—a cooper and an assistant.

Q. 120. What length of time does it require to treat wines by the Estufa process?

A. Six months.

Q. 121. What portion of that time is the heat kept up?

A. It is kept up for five months, and it takes a month to cool the wine down.

Q. 122. What would be the cost for labor of the attendants for the treatment of the wine?

A. I pay a man of that kind two dollars a day and pay a cooper three dollars a day. That is what I am paying at the present time.

Q. 123. Then the cost for labor required for treating that wine would be five dollars a day?

A. Yes, sir.

Q. 124. During what period?

A. Well, it takes the whole period, six months; there is always work to be done.

Q. 125. Can you state what proportion of the fuel, whether more or less, would be required in treating that amount of wine by the Estufa process over and above that required by the Searle process?

A. It requires more fuel, as the whole building has to be heated in the Estufa process, and in the Searle process only the wine is heated. It must require a great deal more fuel and heat.

176 Q. 126. Can you state how much fuel it would require per day by the Estufa process to maintain the necessary amount of heat to treat that quantity of wine?

A. No; I would not undertake to state the quantity of fuel, only in a general way.

Q. 127. Can you give a statement in a general way upon comparison of the two?

A. Yes; it would take at least a cord of wood per day, where the Searle process wouldn't take a half a cord. It wouldn't take any less than that, and I think it would be more likely to take more than less from the fact that the heat is applied by the Estufa process on the outside of the cask, and in the Searle process it is only applied inside of the cask to the wine itself.

Q. 128. And the heat would have to be kept up, as I understand you, for about two months longer in the Estufa process than in the Searle process?

A. Yes, sir.

Q. 129. Are there any other items of expense which you know which would come in during the continuance of the Estufa
177 process?

A. Not unless it is leakage and evaporation.

Q. 130. Can you give an estimate of the amount of loss by leakage during the treatment of wine by the Estufa process?

A. The loss by leakage and evaporation is from 15 to 20 per cent. in ordinary cases.

Q. 131. That is in case particular attention is paid to it?

A. Yes, sir; in case everything goes as well as it can. I am not speaking of extraordinary leakage or evaporation.

Q. 132. Tell, if you know, the cost of machinery and apparatus, furnaces, etc., required to establish and maintain the necessary amount of heat to accomplish the conversion of wine into sherry by the Searle process and by the Estufa process.

A. If I was to put in machinery for the treatment of wine by the Searle process it would take a boiler at the expense of $200. That is all that is necessary except the piping on the tanks. I mean to include in my estimate of the cost of the building necessary to operate the Estufa process all the apparatus necessary to treat the wine except the casks.

Q. 133. In your estimate of the cost of the building for carry-
178 ing on the Estufa process, did you calculate on an ordinary building, such as would answer, or on a building which was neatly constructed and more expensive than was actually necessary?

A. I only calculated on a building such as I would consider safe to carry on business in.

Q. 134. In treating wine by the Estufa process it becomes necessary, does it not, for the attendants to enter the room occasionally?

A. Yes, sir.

Q. 135. Have you calculated the difference in the expense per gallon in the cost of wine by the Searle and Estufa processes, based upon the calculations and estimates which you have given, including interest on money, etc.?

A. Yes. I did make that calculation.

Q. 136. Please state what that difference is.

(Objected to by respondent for the reason that it is a matter of mathematical calculation which can be arrived at without the testimony of the witness. Objection everruled.)

(Ex. Respondent excepts.)

A. You would have to give me time to figure on it. I can tell you in a general way that I have figured that the Searle process
179 was the cheapest at the time I figured on it. That was the time that I entered into the agreement with Mr. Searle to treat wine for me—the agreement Exhibit D.

Q. 137. Did you calculate the difference at the time?

A. I did; yes, sir.

Q. 138. How much did you calculate the difference to be?

(Objected to by respondent as incompetent and a calculation made several years ago, there being no evidence upon what it was based, it not seeming to have been based on the testimony by witnesses of defendant. Objection overruled.)

(Ex. Respondant excepts.)

A. It was sufficient to determine me in my relations with Mr. Searle and enter into a business arrangement with him to treat my wine for me. The expense of treatment by the Estufa process exceeded considerably the expense by the Searle process, so much so that I could not entertain the Estufa process to treat wine. When I counted leakage and evaporation and the expense of constructing a building and cooperage it exceeded the expense of the Searle process.

Q. 139. Then, after investigating all these matters, you came to the conclusion that it was better for you to enter into a con-
180 tract and pay the price stated in that contract than to treat it by the Estufa process?

A. Yes, sir; I had the privilege, as a business proposition, of using the Estufa process myself or entering into the business relations with Mr. Searle to treat the wine for me at fifteen cents a gallon. I preferred giving the fifteen cents to putting up an Estufa process apparatus, because the expense to me would be more than fifteen cents to put up works and treat the wine by the Estufa process.

(Recess until half past two o'clock p. m.)

WEDNESDAY, *October 17th*, 1883—afternoon.

Present: Mr. Dickinson, solicitor, and Mr. Boone, of counsel, for complainant; Mr. Freidenrich, solicitor, and Mr. McKinne, of counsel, for respondent.

Recross-examination of ISAAC DE TURK by Mr. FREIDENRICH:

181 Q. 1. You say you have had no particular experience in the treatment of wines for the production of sherry by any other process than the Searle process?

A. I have not, to complete the process. I had a little experience in the cold process, but I did not keep the wine long enough so as to make what we call a full sherry; it assumed quite a sherry type. I

kept the wine about four years, and it had assumed quite a sherry type.

Q. 2. You did not turn that wine into sherry, did you?

A. I sold it in that condition. I don't know what it was turned into then.

Q. 3. Did you start in to make it into sherry?

A. No, I didn't; it just naturally got into that condition by the cold or natural process.

Q. 4. That is the only practical experience you have had in treating wine by the cold process?

A. Yes, sir.

Q. 5. Do you know of any other manner of treatment by the cold process than that which you have described?

A. It might be varied a little, though the process is the same; the natural process of permitting wine by aging to convert itself into sherry.

182 Q. 6. That is, from your knowledge and experience, it would be impossible to turn wine into sherry by the cold process unless it took at least four or five years' time to complete that process?

A. It would take longer than that to develop a fully sherry; of course it might be termed a sherry sooner.

Q. 7. (Question 6 repeated.)

A. It would.

Q. 8. How long, in your judgment, would it take to treat sherry by the cold process so as to bring it to the state in which the sherry is after being treated by the cold process?

A. It would take at least eight years, unless there is some additions made to it. By the natural process it would take all of that.

Q. 9. What do you mean by additions made to it?

A. For instance, you take an old sherry and plant it with a younger sherry, and you may hasten up the process, which is often done; that is, to be sure, a natural process, but there is an addition of matured sherries to the natural wine.

Q. 10. Do you know whether or not that process is used at all by any of the wine makers?

183 A. Yes, I do; I know some of them do use it.

Q. 11. Then, if the wine is not mixed with sherry, you say it would take at least eight years to bring it to that state of perfection in which sherry is after being treated by the Searle process?

A. Yes; I think it would take all of the time; it would not take less than that; I would rather think it would take a longer period than that.

Q. 12. And the Estufa process, you say, would turn that wine in six months?

A. To the same condition that it is in when treated by the Searle process; yes, sir.

Q. 13. But, in your judgment, to bring all the wine into the same condition by the cold process—that is to say, the condition into which the Searle process brings it—it will ordinarily take from 12 to 15 years?

A. I said to make a full, perfect sherry. The sherry in the Searle process is not always, when it is taken out of the tanks, ready for the market, yet it still wants further treatment, clarifying and ageing, for awhile before it is full sherry.

Q. 14. How long would it take for the sherry to become in the same condition that it is in when the sherry is removed from
184 the tanks in the Searle process by treating it by the Searle process?

A. I have given you my opinion; that is all I can give; not less than eight years.

Q. 15. You say it is impossible to bring it into that condition by the cold process in less than eight years; is that your testimony?

A. That is my opinion; yes, sir.

Q. 16. You say you never treated wine by the Estufa process?

A. No, sir; I never did.

Q. 17. How do you know that the evaporation by the cold process is equal to four per cent. per annum?

A. I know that, from my general experience in all wines, all wines laid in a dry place will evaporate at least that much. I have treated a great many wines in a dry place, and that is about the usual evaporation.

Q. 18. And that occurs to sherry often after it is made into sherry?

A. It occurs to all wine if it is left in a dry place; it makes a great deal of difference whether it is left in the basement or the loft of the building.

Q. 19. So it is not the process that causes the evaporation, but it is the lying still?

185 A. The natural process of evaporation. The only reason why sherry will evaporate more than other wines is that they keep dry, white wines in a damp, cool place, and the sherries are laid in a hot place—a dry place.

Q. 20. You say that the cost in this country of curing sherries by the cold process is so great that it is never practiced?

Q. 21. I don't think I said that it was never practiced; I said that I didn't find it practicable in my experience; if I said it was never practiced in this country I didn't understand the question. I don't want to complicate myself by saying that it was not practiced; if I did say that I wish to correct it; I never had any knowledge about that; other parties may make it.

Q. 21. And you do not know what the expense of making it by that process is?

A. I can reckon the expense.

Q. 22. Do you know the size of the pipe in which wine is put to make — in making sherry by the cold process?

A. The smaller the cooperage the greater the loss. If you put it in 60-gallon puncheons the evaporation is greater than in 120-gallon puncheons, and so on.

186 Q. 23. But, leaving out the question of evaporation, have you any knowledge of the expense of treating it by that process?

A. There is no material expense beyond the usual evaporation and storage—that is, the evaporation.

Q. 24. The evaporation is the chief expense?

A. Yes, sir.

Q. 25. So that if by the cold process the sherry could be made in 12 months the expense of making it by that method would not, in your judgment, exceed the expense of making it by the Estufa process?

A. No, sir; it would not.

Q. 26. Would it be as great as by the Searle process?

A. It would not.

Q. 27. So the difference would be really in the time it would take to cure it by the cold process?

A. Yes, sir; in our country we reckon the interest on money invested in an enterprise, which becomes quite an item when the wine is kept for eight years.

Q. 28. If it were possible to bring the sherry to as good a state of perfection by the cold process in one year as it is when it
187 leaves the tanks under the Searle process, then the expense of making it by the cold process would be less than by the Searle process?

A. Undoubtedly it would.

Q. 29. The only difference would then be in the amount of evaporation, which would depend upon the length of time it took to make it by the cold process?

A. That would be the greatest expense; yes, sir.

Q. 30. The balance of the expense would be the interest upon the capital invested, I suppose?

A. Interest and storage and cooperage.

Q. 31. The cooperage would not have to be changed, would it?

A. No.

Q. 32. If the tanks were not moved the probability is that the cooperage would be good?

A. The cooperage would be good as long as necessary; yes.

Q. 33. Is it not a fact that your knowledge of the treatment under the Estufa process is derived from what is told to you by Mr. Ramus?

A. I got part of my knowledge that way; not all of it.

Q. 34. How do you know that a cooper has necessarily to
188 be kept in the building while sherry is being treated under the Estufa process?

A. It is a natural consequence that while you kept the heat that is required in the Estufa process that the evaporation is great, and the casks will shrink, the hoops will drop off, and even leaks occur that need constant attention and care.

Q. 35. You arrived at that conclusion not from any personal experience that you have had in the matter?

A. I arrived at that from actual observation, knowing the effect of heat, and from what I have learned from Mr. Ramus and what I have read.

A. I said to make a full, perfect sherry. The sherry in the Searle process is not always, when it is taken out of the tanks, ready for the market, yet it still wants further treatment, clarifying and ageing, for awhile before it is full sherry.

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Q. 35. You arrived at that conclusion not from any personal experience that you have had in the matter?

A. I arrived at that from actual observation, knowing the effect of heat, and from what I have learned from Mr. Ramus and what I have read.

Q. 36. Can you state whether it is necessary to keep a cooper for that purpose?

A. It would have to be so unless the proprietor can do the coopering himself, which is often the case. There is a great many wine men do their own coopering.

Q. Don't you know that the proprietor himself usually understands sufficient about coopering to attend to that part of the business?

A. He may and may not.

Q. 38. Is it not usual?

A. I do not think it is usual; no.

189 Q. 39. You do not know that wine makers usually understand sufficient about coopering to attend to that part of the business?

A. I know that when I commenced to make wine I did my own coopering, although I was not thoroughly acquainted with the business of cooperage; as my business increases I have to keep a cooper of my own.

Q. 40. In all large establishments they generally keep a cooper to do all the cooperage work required in the establishment?

A. Yes; almost all of them have one cooper.

Q. 41. Then when you say that the expense of treating wine by the Estufa process would be three dollars a day for a cooper, do you mean to say that that would be the ordinary charge of the cooper for attending to that branch alone, and for nothing else?

A. Well, he might have something else to do, but you can't get a first-class cooper for less than four dollars a day. I am allowing three dollars a day from the fact that I am paying that for a cooper who is not a first-class cooper—that is, he is a first-class cooper, but his health is not hardly sufficient to make him as good as a

190 first-class cooper ought to be.

Q. 42. You do not require a cooper for your business to repair casks for the Estufa process, of course, since you do not use that process?

A. No, sir.

Q. 43. Then you require a cooper in your business for other branches of the wine-making business?

A. Yes, sir; I just mentioned that fact to show the price that I am paying my cooper.

Q. 44. How do you know the amount of evaporation under the Estufa process?

A. I know it from reading and inquiry.

Q. 45. Of whom have you inquired?

A. I have inquired from Mr. Ramus; I have inquired from Mr. Scott; I have inquired from Mr. John Searle.

Q. 46. And what books have you read that informed you that the evaporation by that process was 15 to 20 per cent.?

A. I could not tell you what books I have read that would cite to that particular passage; I have got several works on treating wines and sherries and so on.

Q. 47. You never stood by while a pipe was being filled for treatment under the Estufa process?

191 A. No; I have seen them, though, when they were filled in the building.

Q. 48. You were never present when the pipe was emptied after the treatment was completed under that process?

A. No; I saw the casks and looked into them, and more particularly sounded them to see how much there was out of them. It was a matter of curiosity to me when I was in Mr. Ramus' place, and going through there, to sound the casks with my knuckles to ascertain whether they were full.

Q. 49. But you could not tell how much had evaporated by knocking on the barrel, could you?

A. You could not tell exactly; you could tell almost.

Q. 50. How do you know it requires a cord of wood a day to keep up the fire in the furnace?

A. It would not take any less in a building of that size. I think it would take more, really. I think I was very moderate in my estimate. It could not possibly take any less.

Q. 51. It is simply an estimate that you made from your general knowledge of what?

192 A. General knowledge of heating up a building—using fuel.

Q. 52. Do you know the degree of heat that is maintained for treating sherry by the Estufa process?

A. The same degree of heat will have the same effect in one case as in the other—in the Estufa process as in the Searle process. The thermometer is inserted in the wine, and if it shows the degree of heat required the two processes are just equal.

Q. 53. Do you know the degree of heat maintained in the room under the Estufa process?

A. I could easily ascertain that from the fact from knowing the heat the wine has to be kept at. That would show me very easily what the heat of the room is.

Q. 54. Did you ever see them apply a thermometer to the wine in the pipe under the Estufa process?

A. I never have; no, sir.

Q. 55. Then how can you tell the degree of heat required?

A. I can tell from the results; I know that it would not bear over a certain amount of heat without it would deteriorate

193 and injure it. It won't in the Searle process, and, of course, it won't in the Estufa process, because the wine will only stand so much heat.

Q. 56. You think the heat is the same in both processes?

A. I think it is. It cannot be otherwise.

Q. 57. Why can't it be less?

A. It may be less, but it must not be more.

Q. 58. If it is less under the Estufa process it would not require so much fuel to produce that heat?

A. Well, that is just a matter that a person making wine can determine. If he wishes he can force his work or he can work up slow.

Q. 59. If it takes six months to produce sherry by the Estufa process, can you tell what degree of heat is required to be maintained during that entire period?

A. No; I do not know as I could tell, but I know that it cannot vary much from the heat under the Searle process.

Q. 60. How do you know that?

A. I know from the time it takes to mature it, and from the time that it is in going through the process.

194 Q. 61. If the heat of the wine in both cases is the same, would it take longer by the Estufa process than by the Searle process?

A. I didn't say it would take longer. I say it takes six months in the Estufa process. That is what Mr. Ramus treated his.

Q. 62. Then do you mean to say that they apply the same degree of heat to the wine itself under the Estufa process as in the Searle process—that in the one case it is three months and in the other five months that the heat must be applied?

A. I don't say that they apply the same degree of heat. I say they cannot apply a greater degree of heat than in the Searle process. They might use less. They might use less heat, and make it 12 months to produce the same result in their process.

Q. 63. What I want to get at is how you arrive at the fact that it takes at least a cord of wood to produce the requisite amount of heat?

A. If you were to undertake to heat a building 80 feet square you can readily calculate that it would take more heat than to heat wine in a cask.

Q. 64. Then you arrive at that result from your general experience and from your impression?

195 A. I arrive at that from knowledge. It could not be anything less. I think I am making an underestimate rather than an overestimate in that instance.

Q. 65. How do you know that the cooperage has got to be changed every third treatment?

A. I inquired into that and I found out from practical men, who said that cooperage would only last for two treatments, and I have inquired sufficiently to satisfy myself that it is correct. I have not got my knowledge from one person, but from several persons and from the books treating on the subject in the Estufa process, destroying the cooperage very rapidly.

Q. 66. Can you tell us the book or books from which you got the information that it takes 12 to 15 years to produce sherry by the cold process?

A. I do not know as I could tell you the author. I have got several works on sherry, and amongst my works I have read that.

Q. 67. You are unable to state what the book is?

A. The particular author, yes. I could not tell just now.

196 Q. 68. Your experience in the treatment of wine under the Searle process has been quite frequent the past three years, has it not?

A. The past five years, you might say.

Q. 69. When did you first begin to treat sherry by the Searle process?

A. I didn't treat any myself under that process until I bought those tanks from Mr. Searle, which was in the year 1880.

Q. 70. Since that time you have been making sherry by that process?

A. Yes, sir.

Re-examination of ISAAC DE TURK by Mr. BOONE:

Q. 1. Did I understand you to say, Mr. De Turk, that there is a maximum degree of heat which cannot be exceeded in treating wines by either the Estufa or the Searle process to produce sherry?

A. Yes, sir.

Q. 2. But any degree of heat less than that may be used?

A. Any degree less may be used.

197 Q. 3. In case a lower degree of heat is used, is the time which is required to treat the wine porportionally extended?

A. To be sure.

Q. 4. In either process?

A. I do not know about either process; I judge it is, though; I think it is.

Q. 5. So that you can only force the wine up to a certain temperature, and at that maximum temperature it requires, by the Searle process, three months actual heating and by the Estufa five months actual heating?

A. That is the length of time that they heat the wine. The result seems to be about the same. I have compared the wines and the result seems to be about the same.

Q. 6. In case a lower degree of temperature were used in both the Estufa and the Searle process, and that degree of heat was the same, would the length of time required to treat the wine by the two processes be in proportion to the length of time required when you use the maximum degree of heat?

A. From my experience in that I cannot say. The only thing I know anything about is the results.

By the MASTER:

198 Q. 7. Do you know what degree of heat Mr. Ramus, or anybody else, uses in the production of sherry by the Estufa process?

A. I do not. I know they don't try to set a certain degree of heat.

Q. 8. Do you know of any other process for producing sherry other than the processes to which you have referred, namely, the Estufa process, the cold process, so called, and the Searle process?

A. I do not think I am safe in saying I do. Of course, there is sherry made by mixing, as I have stated awhile ago, old sherries with new wines; you could get a kind of sherry that way. It cannot exactly be called a full sherry, though. It is is done by mixing.

Q. 9. Do you know anything about the expense of producing that?

A. It depends on the kind of a sherry you use for mixing with the ordinary wine. Sherry ranges all the way from $2 a gallon to 15. If you use a very fine sherry to mix, of course it is very expensive.

Q. 10. Do you know what it costs to produce sherry by that process, as compared with the cost of producing it by the Searle process?

199 A. I am satisfied that it would cost more, because the wine that is used for mixing is very expensive.

Q. 11. Do you know what would be a fair manufacturer's profit, regardless of any royalty for the use of the patented process, for producing sherry by the Searle process to the amount of 48,000 gallons?

A. The expense is covered at about three cents a gallon, the necessary expense.

Mr. BOONE:

Q. 12. Suppose the Searle process was open to the public, and there were several manufacturers of sherry by that process, so that there was a natural, ordinary commercial competition in the business, could you state what would be a fair manufacturer's profit for treating 48,000 gallons of wine by the Searle process?

A. Five cents and a half would leave a very handsome margin. I am including in that expense. In other words, I would treat it for that money and pay all expenses myself.

Q. 13. That leaves you two cents a gallon, net, for manufacturer's profits?

A. Yes, sir.

200 *Examination-in-Chief of James J. Searle on Behalf of Complainant.*

By Mr. DICKINSON:

Q. 1. You are the son of the patentee of what is known as the Searle process?

A. Yes, sir.

Q. 2. At the time of your father's death where, if at any place, was he conducting business?

A. 434 Jackson street.

Q. 3. What became of the tanks there?

A. They remained there for some time, until the wine then under treatment was concluded. Then they were taken and stored in the Greenwich dock warehouse for the account of the estate.

Q. 4. What did you take them down for?

A. We took them down to save rent and heavy expenses that was going on. There was no work going on, and we took them down and stored them.

Q. 5. What became of these tanks?

A. They were sold.

Q. 6. Why?

201 A. Because the probate court ordered them sold.

Q. 7. They were part of the property of the estate?

A. Yes, sir.

Q. 8. To whom were they finally sold?

A. The buyer at the probate sale was Donald F. Tillinghast.

Q. 9. Did they come into your possession afterwards?

A. I bought them from Mr. Tillinghast.

Q. 10. What did you do with them?

A. Held them for some time, until I found they were deteriorating, and then I sold them to Mr. De Turk, after I found that there was danger of their warping.

Q. 11. What conversation, if any, did you have with Mr. De Turk as to his use of the process?

A. I sold him the tanks and told him that I would personally not interfere with him in any use that he made of the process, and I would use my endeavors to prevent his being interfered with. He, of course, understood at the time that the tanks were my property.

Q. 12. With reference to the patent—the process?

202 A. He understood that if he used the process—and I understood the same—that personally I would not interfere with him, and that I would use my best endeavors to prevent his being interfered with. He understood that I made no claim to the patent.

By the MASTER:

Q. 13. Did you, in fact, claim no interest in that patent?

A. None whatever.

Mr. DICKINSON:

Q. 14. How did you come to make any such statement to him?

A. I simply did it because I wanted to sell the tanks.

Q. 15. Was there any reason why your guarantee of that kind was of any value?

A. I could use my endeavors in case there were creditors of the estate or any one chose to prosecute him. I could have helped shield him; done what I could towards it; that would have been all—in case there may have been any suits for infringement against him.

Q. 16. Were you acting for yourself in these representations as to his right to use the patented invention?

A. There was no question about his right to use it; but

203 whatever conversation I had with him with regard to using it was entirely on my own account.

Q. 17. This patent at this time was the property of the estate of John Searle, was it?

A. Yes, sir.

Q. 18. Who was the executor or administrator?

A. Sophia Searle was the administratrix. She was my mother.

Q. 19. What authority, if any, had you to sell the patent or any interest in it or right to it?

A. None; that was in the hands of the probate court.

Q. 20. Has it ever been taken out of the probate court?

A. No.

Q. 21. How with regard to the use of this process? Did you ever have authority to dispose of that?

A. No authority at all.

Q. 22. Did you do so at any time to anybody?

A. No; certainly not. Having no authority, I could not.

Q. 23. What do you mean by the statement that there was no doubt that Mr. De Turk had the right to use it?

204 A. I do not think I made any such statement as that.

Q. 24. (The answer to question 16 is read to the witness.)

—. I didn't mean that; that is not what I meant at all. It was a slip of the tongue, for that statement was not correct. I didn't intend to make that statement at all. He had no right to use it. He had to take his own risk in using it.

Q. 25. What was it that you sold to Mr. De Turk?

A. The tanks, supports, and fixtures.

Q. 26. Did you sell him any rights under that patent at all?

A. No rights at all.

Q. 27. Had you any authority to sell him any rights to that patent?

A. No.

Q. 28. Prior to your father's death did you have any practical experience in the operation of curing sherry by that process?

A. Yes, sir; some.

Q. 29. To what extent?

A. To the extent of being there in charge on several occasions, when I happened to be there when the man in charge was away. I relieved my brother occasionally.

205 Q. 30. Your brother was the man who did the work during the latter part of your father's lifetime?

A. Yes, sir.

Q. 31. Where is he?

A. He is in San Juan, San Bonito county.

Q. 32. During your father's last sickness and some time immediately after his death were you or were you not in charge of his business?

A. Not during his last sickness, but after his death I looked after it.

Q. 33. You had access to the books showing the business in connection with this process?

A. Yes, sir.

Q. 34. Was there any other business carried on in connection with it at 434 Jackson street?

A. Towards the latter end there was a little done in shipping wines, but you could hardly call it at that place. The business, I

think, was done more at the warehouse. It was not in connection with this business at all. Some wines we shipped East, and for other parties than De Turk; but it was simply natural wine we shipped East, not cured wine.

Q. 35. Do you know how much labor it took under the
206 Searle process to conduct the process?

A. Yes.

Q. 36. Do you know what the expense was per gallon for curing wine under that process?

A. Yes, sir; it was something under three cents.

Q. 37. I will ask you to figure it in two ways. First, without reference to the cost of the plant; and, secondly, with reference to the cost of the plant.

A. I refer to the memorandums that I have taken from the cash-book. For one batch of wine, from 32,000 to 34,000 gallons, the expense for firewood was $83.75; labor of one man about the place, at $50 a month, for four months, $200; water bill for four months, $16; extra labor for putting the wine into the tanks—I had it done by a hand-hoist, and the amount I was not certain of. I put it at the outside figure, $100. The chances are that that was twice what I paid. Those were all the expenses except the rent. The rent of the building was $100 a month—that would be $400. The plant, the tanks, and boilers, when new, including setting up and everything, cost $3,682.53. I calculated the
207 interest on that amount for four months at 10 per cent. per annum, which amounts to $147.28. I have called the life of the tanks 12 years—that they would last 12 years—and I have taken four months at that rate, which would be three per cent. The value of the tanks alone was $2,928.02, which would make the deterioration of the tanks during the *the* four months $87.84; that makes a total of $1,034.87. Calling the average number of gallons turned out at one treatment 33,000, it would make the cost of producing each gallon 3.13 cents.

Q. 38. Are there any other items of expense to be calculated in with that?

A. I do not think of any.

Q. 39. In addition to this character of labor, how much time did you, as superintendent, have to devote to it?

A. I would go over every day; I have been there as long as three hours, but, as a general thing, I would go over and stay ten minutes.

Q. 40. What would you do when you would go there?

A. I would go and see that the wine was at the proper heat—that things were going on all right about the place.

208 Q. 41. Were you conducting any other business at the same time?

A. Yes; the warehouse business.

Q. 42. Do you know what the percentage of evaporation was while you were operating there on Jackson street?

A. No; I could not say that I know of the percentage; I didn't keep an account of it.

Q. 43. Did you have an account of the amount of wine that went into the tanks?

A. No; there was a mistake made in putting the lot in, so we didn't have any data which would show the evaporation of that lot; on all previous lots the evaporation can be shown; the amount that went in and the amount drawn off can be shown—the amount that went in and the amount drawn off, and therefore the amount of evaporation.

Q. 44. In whose handwriting are those books?

A. In my father's.

209 Cross-examination of JAMES J. SEARLE by Mr. FREIDENRICH:

Q. 1. Who has been the business manager of that estate since your father's death?

A. My mother has been the executrix and I have done the work for her.

Q. 2. You have attended every session that has been held in this suit?

A. I don't think I have lost any, but I am not positive.

Q. You have counseled and advised your counsel for complainant in the case right along from the beginning to the end of it?

A. Yes, sir.

Q. 4. And since your mother's appointment as executrix you have assumed for her the business management of the estate?

A. I have done it; certainly.

Q. 5. With her knowledge and consent and at her request?

A. I don't know that it is at her request. I don't believe there was any request in the matter. I have done it with her knowledge and consent.

210 Q. 6. And upon your father's death you completed the curing of the wine that was then in the tanks, and then you quit the business entirely and removed the tanks to the Greenwich dock warehouse, did you?

A. They were removed some time after that.

Q. 7. The tanks, you say, were sold to D. F. Tillinghast, and you bought them from him?

A. Yes, sir.

Q. 8. In pursuance of a previous understanding had with Tillinghast, did or did you not have an understanding with Tillinghast that you were to purchase from him the tanks which he purchased at the probate sale?

A. I asked Mr. Tillinghast to buy the tanks in for my account unless they went over a certain price, which was about six and a half cents a gallon.

Q. 9. And the purchase was made accordingly?

A. And the purchase was made accordingly.

Q. 10. And you paid him what he paid at the sale?

211 A. I paid, I think it was, what he paid.

Q. 11. Was any money actually passed between you?

A. No; I think not.

Q. 12. Did you pay your mother before you sold the tanks to De Turk?

A. Certainly.

Q. 13. You actually paid her before you sold the tanks to De Turk?

A. Certainly; they were paid for long before.

Q. 14. Paid by check?

A. They were paid by check, I guess, or in cash.

Q. 15. Did you or did Tillinghast pay for the tanks when they were sold at the probate sale?

A. Tillinghast received the receipt and I advanced the money.

Q. 16. You paid the money at the time to your mother, did you?

A. I don't remember whether it was at the time or within a few days afterwards. The money was passed afterwards over to her, shortly after.

Q. 17. And then you sold them to De Turk?

A. I sold them to De Turk some time afterwards.

212 Q. 18. You knew the purpose that De Turk wanted to use them for, did you not?

A. Certainly I did.

Q. 19. Did your mother know that you were selling them?

A. No; I don't think she was in the country at the time.

Q. 20. Did you inform her that you had sold the tanks?

A. Yes; I informed her that I had sold the tanks to Mr. De Turk.

Q. 21. When did you tell her that?

A. I don't remember when.

Q. 22. Shortly after the sale?

A. If she was away it was shortly after she returned. If she had returned then it was immediately after.

Q. 23. Your mother knew of the arrangement that your father had had with De Turk?

A. Yes, sir.

Q. 24. She knew he was a wine dealer in Santa Rosa?

A. Yes; she knew that he was a wine dealer. I don't know whether she knew he was in Santa Rosa.

Q. 25. You knew when De Turk bought them that it was his intention to treat sherry by the Searle process?

213 A. Yes, sir; I suppose so.

Q. 26. Those tanks could not have been used for any other purpose except for treating wine by the Searle process?

A. Oh, certainly; they could have been used for storing wine as well as any other tanks.

Q. 27. With the coils in?

A. The coils could have been taken away.

Q. 28. What became of the coils?

A. They were sold with the tanks.

Q. 29. And it was your understanding at the time that he was to use the tanks for treating wine by the Searle process?

A. He could use those tanks for any purpose he chose to, and I would use my influence to protect him from any trouble arising from his use of them.

Q. 30. What do you say he paid you?

A. Six cents a gallon was the price mentioned on the bill, but the allowance I made brought it below five and a half cents.

Q. 31. Did you use your influence with your mother not to prosecute him?

A. No.

Q. 32. There was no occasion for it, was there?

214 A. I never mentioned it to her; she has never been informed of it, that I know of.

Q. 33. Do you swear positively that when you sold the tanks to De Turk your mother did not know that he was intending to make sherry by the Searle process?

A. She did not know it from me.

Q. 34. You told her that you had sold the entire plant, did you not?

A. I do not know exactly what I told her about that; I know that I told her that I had sold the tanks; I know that I didn't tell her what my arrangement with De Turk was.

Q. 35. You knew all the while that he was using the Searle process?

A. Not of my own knowledge; I had never seen the tanks in operation.

Q. 36. No efforts had been made to stop him from using it?

A. No, sir.

Q. 37. Why not?

A. Because I have never seen him use them for treating wine; I was up there once when the tanks were being set up, but I have never seen them used.

Q. 38. When you state that you would use your endeavors

215 to see that he was not interfered with you knew that he was intending to use the Searle process?

A. Yes, sir.

Q. 39. Did you not from that presume or assume that he was using it right along?

A. I could not have assumed it at that *that* time.

Q. 40. But didn't you think he would put them up?

A. I presumed so; yes, sir.

Q. 41. Why didn't you stop him using that process?

A. What right had I to stop him? I had no rights under the patent.

Q. 42. Didn't you institute or cause to be instituted this suit—this suit against Dreyfus & Company?

A. This suit was brought by my mother.

Q. 43. Was it not brought at your instigation?

A. At my instigation. I told her to bring the suit.

Q. 44. Why did you have the suit brought against them and not against any one else?

A. That is my business, I think. If I choose to give her

216 advice about sueing any particular person I suppose I am at liberty to do so.

Q. 45. Did you not, at the time you sold these tanks to De Turk, assure him that he would not be interfered with in using the process?

(Objected to by complainant as immaterial. Objection overruled.)

A. No. I was not so foolish as to do that.

Q. 46. Is your mother in town?

A. Yes.

Q. 47. Has she been in the city all the time while this suit has been pending?

A. She has been out of *time* occasionally. She has been out of the United States during that time once.

(Recalled, page 198.)

(Continued, by agreement of counsel, to Monday, 22nd instant, at 2 o'clock p. m.)

217 MONDAY, *October* 22*nd*, 1883.

Present: Mr. Dickinson, solicitor, and Mr. Boone, of counsel, for complainant; Mr. Freidenrich, solicitor, and Mr. McKinne, of counsel, for respondent.

Examination-in-Chief of Julius Scott on Behalf of Complainant.

By Mr. BOONE:

Q. 1. State your name, age, place of residence, and occupation.

A. My name is Julius Scott; my age, 41 years; my place of residence, Healdsburgh, California, and I am a wine maker and distiller.

Q. 2. What has been your occupation during the last five or six years?

A. Wine making and distilling.

Q. 3. Where?

A. In Sonoma county.

Q. 4. What particular branch of wine making have you been engaged in?

218 A. All kinds; common dry wines and sweet wines, sherry wines, and so on.

Q. 5. Have you had any experience in the treatment of wines for manufacturing sherry?

A. Yes; I had a sherry house there.

Q. 6. State what your experience has been—the amount of experience.

A. The first batch that I put in was between fifteen and seventeen thousand gallons.

Q. 7. How long ago was that?

A. Two years, about, I think.

Q. 8. State what mode of treatment you applied to the wines for the manufacture of sherry.

A. It was a hot-house; I believe what is known as the Estufa process.

Q. 9. How many gallons of wine did you treat?

A. I put in between sixteen and seventeen thousand gallons.

Q. 10. How many did you take out?

A. Between eleven and twelve thousand gallons.

Q. 11. What became of the difference between eleven and seventeen thousand gallons?

A. It leaked out and evaporated, and God knows what became of it; it was lost by the evaporation and leakage, besides spoiling my cooperage.

219 Q. 12. How large a place did you keep for that seventeen thousand gallons of wine?

A. I forgot the exact size, but the building was large enough to put in twenty thousand gallons easy enough.

Q. 13. How many tiers of casks did you use?

A. I had six hundred-gallon tanks, supposed to hold six hundred and fifty gallons apiece; and then I had some pipes and puncheons which would hold a hundred and sixty or seventy gallons apiece.

Q. 14. In which vessels did the process work the best—in the pipes or in the tanks?

A. I didn't like either; the leakage was considerable in both.

Q. 15. (Q. 14 repeated.)

A. I suppose in the pipes it worked better than in the tanks.

Q. 16. What was the building made of?

A. A brick building, one story.

Q. 17. What was its cost?

A. I think somewheres in the neighborhood of twelve hundred to fifteen hundred dollars—somewhere along there.

Q. 18. Do you know what a building of that character would cost, having a capacity to treat forty-eight thousand gallons?

220 A. That depends on material—where you get your material; if you get it right on the spot or have to ship it from other parts.

Q. 19. Supposing that the building was constructed at Healdsburgh?

A. A building of that kind—a rough estimate—I would say about four thousand dollars.

Q. 20. Does that include the furnace?

A. I guess so. I guess that would include the whole complete; I think about that.

Q. 21. What did your cooperage cost you?

A. I paid six or seven cents a gallon for the tank. It was oak.

Q. 22. How long did the tanks last; for how many operations?

A. I think for the third batch they would want a new set of hoops, from my experience that I have had. The heads will warp considerable; they warp all to pieces every way, up and down and criss-cross. The staves will stay quite well, but every batch, if you put in a new head, you had the same trouble by its shrinking. The sherry will leak through; you have to keep driving hoops and working away at the casks to try to stop leaks.

Q. 23. You say that you have to have new heads every time and new hoops?

221 A. Not new hoops, but you would have to have new heads pretty often. If I put a new head in, of course I have to build it over. I have to shape the staves and put in a head. I

know for making the first batch I had to take both heads out of the tank in order to use them for other purposes. The heads were completely ruined.

Q. 24. How many men did you have employed about the establishment?

A. I always had a man at night to keep the fires up, and in the daytime the foreman was always there with me. We both looked to it in the daytime.

Q. 25. Who attended to the cooperage?

A. This foreman and myself.

Q. 26. What was it that caused this shrinkage of the casks and the warping of the heads of the tanks?

A. The heat, of course.

Q. 27. The extraordinary heat—the heat in the room?

A. Certainly.

Q. 28. How long did you continue the process, Mr. Scott, in order to cure or treat two batches of wine?

A. That depends. The wine maker ought to know when it
222 is ready. It takes from four to six months. I think I had my wine in between four and five months in the sherry-house.

Q. 29. That is, you kept the heat up that time, did you?

A. Yes. Some wines it takes a little longer than other wines?

Q. 30. Does the quality of the sherry depend to any extent on the length of time which it is treated?

A. By the same process you may make a perfect sherry wine in four months, and by the same process you can make a perfect sherry wine in six months. One is as good as the other. It depends upon the kind of wine you are putting in. You want to select the right kind of wine to make sherry out of. Every wine is not fit to make sherry.

Q. 31. Have you made any calculation and can you state about what the expense would be per gallon of manufacturing sherry wine by the Estufa process?

(Objected to by respondent because it has not yet appeared that the witness manufactured more than one batch. Objection overruled.)

A. No; I don't remember the figures exactly, but I told you already that I put in between sixteen and seventeen thousand
223 gallons, and took out between eleven and twelve thousand gallons—you can figure yourself—and then we had to be there two or three hours in the daytime, and had to have a man there in the night-time.

Q. 32. Do you know anything about the Searle process of manufacturing wine?

A. No more than I have heard speak about it; had heard that the wine goes through a coil inside of the vat. I have seen wine made by the Searle process. Mr. De Turk, I believe, has used it.

—. What wages did you pay the men employed about the establishment?

A. I paid my foreman two dollars and a half a day, and the night watchman, I believe, I paid a dollar or a dollar and a half; I don't exactly remember.

Mr. DICKINSON:

Q. 34. Did you board them?
A. No.
Q. 35. Do you know what quantity of fuel was used in the treatment of one batch that you treated by that process—how much per day?
A. It took about a cord of wood in a day of twenty-four hours.
Q. 36. You say you have had no practical experience in
224 the treatment of wine by the Searle process?
A. No, sir.
Q. 37. Have you ever investigated the subject to find out the mode of operation, so as to be able to compare the Searle process with the Estufa process?
A. Of course, I have got a good idea of what the Searle process is. The heat on the inside won't affect the cooperage, undoubtedly; the cooperage would last as long that way as if there was no heat applied.
Q. 38. How about the amount of evaporation in the Searle process, as compared with the Estufa process; has your experience or investigation enabled you to make any comparison in that regard?
A. No; from my experience I could not speak in that regard.
Q. 39. Or your investigation?
A. No; I have not investigated that.

Cross-examination of JULIUS SCOTT by Mr. FREIDENRICH:

Q. 1. How many batches did you cure by the Estufa process?
A. One.
Q. 2. That was when?
225 A. About two years ago.
Q. 3. How long did it take you to cure that?
A. I think between four and five months; it was subjected to heat that length of time.
Q. 4. You had never cured any before that time by the Estufa process?
A. No.
Q. 5. Never cured any since by that process?
A. No.
Q. 6. Then, all the experience you have had in curing it by that process was during the time that you cured it at that time?
A. Yes, sir.

Re-examination by Mr. BOONE:

Q. 1. Why did you cease manufacturing sherry by the Estufa process?

(Objected to by respondents as immaterial. Objection overruled.)

A. I didn't think it would pay to make sherry wine and lose as much as I did. One batch was enough for me; I didn't want any more.

Q. 2. Were you careful about the cooperage all the time?

A. As careful as I could be. I was there day and night and all the time.

Q. 3. There were two tanks in your cooperage. Where was it?

226 A. It was after my cooper mades these pipes.

Q. 4. What investigation did you make regarding the Estufa process before you commenced using it?

(Objected to by respondent as immaterial, irrelative, and incompetent. Objection overruled.)

(Ex. Respondents except.)

A. I went to Napa and examined the sherry-house there of a man by the name of Joe—I forget his other name—as to how it was built, how many flues there were for the heat, and so forth, and found out all about it; examined into it as much as I could find out there, and then went back and filled this one.

By the MASTER:

Q. 5. For what purpose was that building in which you treated sherry constructed?

A. For a hot-house to manufacture sherry in by that process.

Q. 6. Was it intended for any other use as well?

A. No other use.

Q. 7. Did you use the building for any other purpose during the time of that treatment of the sherry was going on?

A. No.

227 Q. 8. Give, as nearly as you can, an estimate of the cost to you of that sherry.

A. I figured it at the time. There was a loss of between five and six thousand gallons of wine, which is worth forty-five cents a gallon. That is what the large houses would pay for it here, provided it was a fair sherry. There was a loss of that five or six thousand gallons of that kind of sherry, besides labor and fuel. The fuel cost four dollars a cord.

Q. 9. What other duties had the night watchman besides keeping up the fire for the treatment of this sherry?

A. That is all I had him there for.

Q. 10. Would you or not have employed him if you had not been treating this sherry?

A. I would not.

Re-examination of JAMES J. SEARLE by Mr. BOONE:

Q. 1. Upon your former examination you stated that you could and would produce the books of John Searle showing the expense attending the treatment of wine by the Searle process and the amount of evaporation. Have you found those books?

228 A. No; I have not the book showing the evaporation. Papers showing the receipts and drawing off of the wine I cannot find.

Q. 2. Have you made search for them?

A. Yes. I have searched every place that I had control over where they would be likely to be. I had the books when I moved from 434 Jackson street, and I believe I have seen the books since then, but I do not remember just how long ago, and now I cannot find them.

Examination-in-Chief of John Searle on Behalf of Complainant.

By Mr. BOONE:

Q. 1. You are the son of John Searle, deceased, are you?

A. Yes.

Q. 2. Where do you reside?

A. San Juan, San Bonito county.

Q. 3. What is your business?

A. Tanner.

Q. 4. In what business were you engaged at the time of your father's death?

A. Engaged in superintending his wine business, at 434
229 Jackson street, in this city.

Q. 5. About how long had you been so engaged?

A. I had been engaged for two years there.

Q. 6. What was your business as superintendent in connection with the process?

A. I did everything to it; received all the wine, put it in the tanks, and attended to the process and took the temperatures, and did all that there was for us to do.

Q. 7. How many batches of wine did you and your father treat by this patented process between the time that you commenced and the time of your father's death?

A. I don't remember how many we treated.

Q. 8. Can you give us something of an idea? Was it one or more batches?

A. It was more than one, I think.

Q. 9. Can't you state something nearer than that?

A. There was three that I know of.

Q. 10. What amount of wine was treated at each batch?

A. About thirty thousand gallons.

Q. 11. Who owned the building in which this treating was carried on?

230 A. I don't know. It was a rented building.

Q. 12. What rent did you pay?

A. We paid one hundred dollars a month, less twenty dollars that Mr. Curtis was to pay for his office.

Q. 13. That is, you sublet part of it for twenty dollars?

A. Curtis paid twenty dollars for the room that he occupied.

Q. 14. Then the actual rent paid for the place for carrying on the process was eighty dollars a month?

A. Yes, sir.

Q. 15. How many tanks did you have?

A. Four at first, and then afterwards we placed two small one- upstairs.

Q. 16. They held about thirty gallons, did they?

A. Yes, sir.

Q. 17. How long did it take you to fill those tanks?

A. If the wine came down all at once it would take less than a week to fill the four.

Q. 18. How many men did it require to do that work?

A. It required one man besides myself to fill the tanks by the hand-hoist.

Q. 19. How much did you pay that man per day?

231 A. Two dollars a day.

Q. 20. How much fuel would it require per day to treat a batch of thirty thousand gallons?

A. I could not state by the day exactly, but it would take about seven or eight cords of wood for the whole process the time of heating.

Q. 21. How long did the process run before the batch was concluded?

A. The time of heating was two and a half to three months.

Q. 22. Can you state how much your wood cost you?

A. I don't know what the price of wood was. I didn't attend to that part of the business.

Q. 23. How many men did you require to look after the process after the tanks were filled and during the treatment?

A. It required nobody. I attended to that myself. I attended to the whole thing.

Q. 24. Did you receive a salary for this?

A. Yes, sir.

Q. 25. How much?

A. Fifty dollars a month.

Q. 26. Did you find any difficulty in keeping the cooperage in order during the process?

232 A. No; there was no trouble at all.

Q. 27. Did you ever have any leaks?

A. No, except very slight ones, that stopped entirely in two or three days.

Q. 28. Do you know the amount of evaporation which occurred during the process in treating thirty thousand gallons of wine?

A. From four and a half per cent. to less than that percentage.

Q. 29. How did that evaporation take place? Were the tanks open?

A. No; the tanks were all closed.

Q. 30. How did the evaporation take place?

A. By natural evaporation and sipeage into the wood, I suppose.

Q. 31. Then it was the evaporation from the outside of the tanks, was it?

A. From the outside, I should judge, mostly.

Q. 32. Was the evaporation uniform with every batch?

A. No; it was not; it was greater in the first batch; there was an accident and the head of one tank fell in.

Q. 33. How much was the evaporation on the first batch?

A. About four and a half per cent.—less than five per cent.

233 Q. 34. What was the amount of evaporation on all the other batches treated?

A. Three or three and a half per cent. It didn't exceed three and a half per cent. after the first batch.

Q. 35. Did it ever reach four and a half per cent. after the first batch was treated?

A. No.

Q. 36. Then to what did you attribute the excessive evaporation of the first batch?

A. To having to handle the wine so many times. It had all to be drawn off from the first tank when the head fell in.

Q. 37. Did this accident occur before or after the heat was applied to the wine?

A. After.

Q. 38. Do you know what the cause of that accident was?

A. The head was made too small by the coopers.

Q. 39. It was not the fault of the process?

A. It was not the fault of the process.

Cross-examination of JOHN SEARLE by Mr. FREIDENRICH:

234 Q. 1. When did you begin this process with your father?

A. In 1876 or 1877.

Q. 2. And you remained with him two years?

A. I don't remember the length of time I was there.

Q. 3. About how long altogether were you employed in your father's establishment treating sherry by this process?

A. Between one and two years.

Q. 4. When did you begin?

A. In 1876 or 1877.

Q. 5. And when did you quit?

A. 1879.

Q. 6. What time in 1879 did you quit?

A. I don't know.

Q. 7. How long before your father's death did you quit?

A. I believe it was after my father's death.

Q. 8. What is the fact about it? Was it before or after your father's death that you quit?

A. It was after.

Q. 9. And you remained there until the batch that was in the tanks was cured after your father's death?

A. I don't remember.

Q. 10. Don't you know that there was no more sherry cured in those tanks after your father's death than the sherry that

235 was in the tanks at the time of his death?

A. That was all I had anything to do with.

Q. 11. You remained there until that batch was finished after your father's death?

A. I finished that batch.

Q. 12. Did you go into this business in 1876 or 1877?

A. I don't know which year it was.

Q. 13. Can you fix it with reference to the contract that was made with Mr. De Turk?

A. I don't know anything about any contract.

Q. 14. Then if you remained there until after your father's death, in 1879, and you are in doubt whether you went there in 1876 or 1877, it was not less than two years that you were in that establishment, was it?

A. Yes; I believe it was less than two years.

Q. 15. About how much less than two years?

A. I am sure I could not say.

Q. 16. And you remember of but three batches that were cured during the time you were there?

A. There may have been more than that. I don't remember more than three.

236 Q. 17. Were the tanks filled during all the time that you were there, or was there a time when they were empty?

A. The only time they were empty was while we were waiting for wine to put in them.

Q. 18. About how long would that be?

A. Not more than a few days.

Q. 19. Now I understand you to say that it would take a week to fill the four tanks provided the wine was on hand, and that you required the services of a man besides yourself. What was the fact? Did you have the wine on hand so as to be able to fill those tanks within a week?

A. No.

Q. 20. How long did it take you actually to fill those tanks?

A. That is more than I could say.

Q. 21. Did you require the services of that man continually?

A. No.

Q. 22. Then you employed him only as you had wine there to be put into the tanks?

A. That is all.

Q. 23. At the rate of two dollars a day?

A. That is what I paid him—two dollars a day.

237 Q. 24. You remember of but three batches that were cured during the entire time that you were with your father in this establishment?

A. That is all I remember.

Q. 25. Who kept the books? Did you or did your father?

A. I kept the books showing the wine received and what we drew off the tanks, and kept the temperatures of the wine also.

Complainant rests.

(Continued, by agreement of counsel, for taking of testimony on behalf of respondents to Thursday, 25 inst., at 2 o'clock p. m.)

THURSDAY, *October 25th*, 1883.

Present: Mr. Dickinson, solicitor, and Mr. Boone, of counsel, for complainant; Mr. Freidenrich, solicitor for respondent.

Examination-in-Chief of Charles Kohler on Behalf of Respondent.

By Mr. FREIDENRICH:

Q. 1. What is your business?

238 A. Vintner.

Q. 2. How long have you been engaged in that business?

A. Nearly thirty years.

Q. 3. You are a member of the firm of Kohler & Frohling of this city?

A. Yes, sir.

Q. 4. What experience, if any, have you had in the treatment of sherries?

A. About three years ago I began to make sherry wine in Sonoma.

Q. 5. And have continued it from that day to this, have you?

A. Yes, sir.

Q. 6. Will you be kind enough to state to us the process by which you make it?

A. I have got what the Spanish call a "*casa de sol*," a kind of hot-house. Its dimensions are about twenty by fifty feet. It has a double wooden frame-work, and the sides are filled up with sawdust. The whole roof is slanting towards the south. It is made out of glass, and that glass is on the inside covered with black paint, ordinary black paint—stove-pipe blacking—because black attracts the sun more than the glass would without it. It stands on a hill. It is protected against the northwest, and exposed to the heat of
239 the sun from morning until night. The entrance to the house is a kind of an ante-chamber. There are two doors, and when you open one door you come into a small room about four feet long and twenty feet wide, the whole width of the building. There is a stove in that, and whenever the heat in the building goes below one hundred and ten degrees my men put in a piece or two — in the stove and put fire in it. There is a four-inch pipe inside that goes all around the building on the inside which the heat from the stove goes through on the inside of the wall of this building. The space on the whole inside of the building is filled up with casks.

Q. 7. The heat is principally obtained from the sun through the roof?

A. Yes; only some cold days and cold evenings we have a little fire. We fire up but little in the summer; only occasionally.

Q. 8. You don't undertake to keep up a fire in the stove?

A. No; only when the heat is below one hundred and ten degrees. I try to keep it as near one hundred and twenty degrees Fahrenheit as I can.

Q. 9. How long does it take to treat sherry by that process?

240 A. In three or four months the sherry gets reasonably good; of course, if you leave it in longer, the longer you leave it in the more rich sherry flavor it gets.

Q. 10. How long do you leave it in the tank?

A. Three to four months.

Q. 11. And then draw it off?

A. Yes; I draw off four-fifths, but always leave a little remaining in it.

Q. 12. Are you familiar with sherry cured by the Searle process?

A. I had two lots of Mr. De Turk's sherry—two different lots made by him, as he told me, by the Searle process.

Q. 13. How does your sherry after you draw it from your tanks at the end of three or four months compare in quality with the sherry which you purchased from Mr. De Turk and which he represented was manufactured by the Searle process?

A. I think my process is the better of the two.

Q. 14. (Q. 13 repeated.)

A. It is better than that made by the Searle process.

Q. 15. It has arrived at a better state of maturity in three or four months by your process?

241 A. Yes; partly that and partly it has not got the taste of the pipe that Mr. De Turk's sherry has.

Q. 16. Have you made a calculation of the cost of curing sherry by your process?

A. I have not made an exact calculation, but the cost is very little, if anything—only the work of pumping in the wine, and, occasionally, a man to do the work around the house. In a cool day he will look at the thermometer, and, if it is below one hundred and ten degrees, he will start a fire in the stove and put in a piece or two of wood.

Q. 17. You don't require a man especially for that purpose?

A. No, sir.

Q. 18. The employees of your vineyard attend to it?

A. Yes, sir.

Q. 19. How many men are required in pumping the wine into the tanks?

A. Well, I have generally got two men at it, and it generally takes them half a day, probably five or six hours; that is all.

Q. 20. How much do you treat at one treatment?

A. Between five and six thousand gallons goes in the hot-
242 houses at a time, as near as I can judge.

Q. 21. Could you not treat a larger quantity by enlarging the building at very little more expense?

A. The work would not be any more except the pumping in and the pumping out.

Q. 22. How does your process effect the casks in which you have the wine?

A. It dries them up a little and warps them a little more probably than the process of Mr. De Turk's, but I have had the same casks in for two years, and I believe they can stand for five or six years longer. I put them in with plenty of hoops on them so that they cannot warp a great deal, and then we only take what we call "old soldiers," and never take the best wooden casks for that, you know.

Q. 23. Can you give us an estimate of the cost per gallon of curing sherry by your process?

A. Well, we calculate that, including evaporation and all, it will cost us between four and five cents a gallon in a time of from three to four months. It may cost one season a half a cent more and another season a half a cent less. We always calculate that it costs five cents a gallon, and that is within the figure.

243 I don' think it will exceed five cents, including evaporation.

Q. 24. About what evaporation is that?

A. It is about seven to eight per cent. in three or four months. The evaporation, I think, is more with me than it is in the Searle process.

Q. 25. Have you made an examination of the Searle process?

A. I have seen the casks of Mr. Searle here on Jackson street while Mr. Curtis was in there, but I have never seen the whole thing carried through.

Q. 26. Have you studied the process at all?

A. No; not the Searle process, I have not. Only the results.

Q. 27. How do you know the results?

A. Because I bought two lots of sherry wine that was treated by the Searle process.

Q. 28. When did you make that purchase?

A. Probably a year ago, one lot; probably a year and a half ago the other lot.

Q. You know that from Mr. De Turk?

A. I know that from Mr. De Turk, who bought, in fact, the whole of the machinery from Mr. Searle and moved it to his own place in Sonoma.

Q. 30. Now, I will ask you how that sherry that you pur-

244 chased from Mr. De Turk and which was made by the Searle process compares with the sherry that you made by your process?

A. In my opinion, it gets an unpleasant, metallic taste when treated by the Searle process.

Q. 31. How does it compare in market price with the sherry that you made by your process?

A. If I could have bought the sherry cured on my principle I should have preferred it to that of Mr. De Turk's.

Q. 32. In selling the sherries was there any difference in the price?

A. No; not much; about the same.

Cross-examination of CHARLES KOHLER by Mr. DICKINSON:

Q. 1. You have had this house in Sonoma for three years?

A. About three years; yes, sir.

Q. 2. How many batches of sherry have you made in that time?

A. Generally two a year. We didn't cure during the cold spell in winter.

Q. 3. The method that you pursued, then, depends on the heat of the sun chiefly?

245 A. Yes, principally. It is the old Spanish process.

Q. 4. Is it used by any other person in this State?

A. I don't know.

Q. 5. In the Searle process it wouldn't make any difference whether the weather was cold or warm?

A. It makes no difference; you can run it all the year round, but you can run our process, too, only you have got to use more wood.

Q. 6. In other words, you would have to depend upon artificial heat?

A. Yes, sir.

Q. 7. What would be the effect of an increase of the artificial heat upon your cooperage?

A. I think that my process warps the packages a little more than the Searle process.

Q. 8. If you increased the heat would the warpage be still more?

A. Yes, sir.

Q. 9. And the evaporation more?

A. Yes; it would.

Q. 10. And the cost for attendants more?

A. No; only to just put the wood in the fire.

246 Q. 11. It would require more labor to keep the fire up?

A. Yes, if you increased the heat, but there is no need of increasing it; it should not be over one hundred and twenty degrees. So soon as you put it over one hundred and twenty the quality of the wine will suffer.

Q. 12. On what do you base that remark?

A. Because if you make it much more than one hundred and twenty degrees the wine acquires a kind of smoky taste, and it don't give it as good a flavor.

Q. 13. What experience have you had in the application of greater degrees of heat?

A. I have got it only from hearsay. We never tried to go over one hundred and twenty degrees; it may have been a degree or two over.

Q. 14. Have you had any experience in treating sherry by any other process except this that you mention?

A. No, sir.

Q. 15. Have you tasted wine which had been treated with a greater degree of heat than one hundred and twenty degrees?

A. I suppose the Searle wine is made with one hundred
247 and forty degrees, if I am not mistaken.

Q. 16. Does that have a smoky taste?

A. Yes; it has a little smoky taste and a metallic taste at the same time—an unpleasant taste; at least, those two lots that I got from Mr. De Turk had.

Q. 17. You knew Mr. Searle in his lifetime, did you?

A. Yes, sir; I knew him well.

Q. 18. Did you ever taste any of the wine cured by him during his life?

A. No; I don't think I did.

Q. 19. You conversed with him frequently, did you not, about the process?

A. Yes, sir; very often.

Q. 20. You have been at his place?

A. Yes, sir.

Q. 21. When the works were in operation?

A. No. Mr. Curtis made it at that time, and I thought when I made the first visit there that I was not received as freely as I would receive visitors in my place, and therefore I didn't go into the place any more.

Q. 22. When was this?

A. That was probably five or six years ago; I think on Jack-
248 son street; not that I was ill-treated, but I was under the impression as if visitors were not wanted there, and therefore I didn't go there any more.

Q. 23. Did you see Mr. Searle there?

A. No, sir; I only saw Mr. Curtis there.

Q. 24. Didn't Mr. Searle take samples of sherries made by his process over to your place and ask you to test it?

A. He may have done so, but I don't remember it.

Q. 25. How would your process work in a situation where it was exposed to all kinds of weather?

A. If the building was tight from outside it would work well enough if the cold north winds were not blowing.

Q. 26. Suppose it were so exposed to a cold north wind?

A. It would only take more fire to get a certain degree of heat; that is all.

Q. 27. Your first batch of sherry that you cured, what kind of wine was that?

A. That was white wine made from the mission grape with some other grapes in it. I cannot tell exactly what wine it was now; that was three years ago; but we generally tried to get mission-grape wines—heavy, very rich wines—made late in October or November, and if we could get Hungarian grapes with it, or Fiherzagus,
249 I would put them in with it. I occasionally could buy good grapes in Sonoma.

Q. 28. You mean wine made from good grapes?

A. Yes; wine made from good grapes—made later in the season. It was principally from the mission grapes, but I would blend it with other grapes that I thought would make a good sherry.

Q. 29. Now, with reference to the first batch that you made, you chiefly used this white wine made from the mission grapes?

A. In all the batches I chiefly used white wine made from the mission grape well matured; occasionally, for some batches, we mixed the Hungarian and Fiherzagus grapes.

Q. 30. In what portortion?

A. Just as we had it on hand; sometimes five, sometimes ten per cent. of those grapes.

Q. 31. This white wine, of what age was that?

A. They was generally four, sometimes six months, and some-

times a year and a half old, but it never exceeded two years in age, because new wine would do almost as good as old wine for that.

Q. 32. These other wines that you mixed with the mission grape wines, were they more expensive?

250 A. Oh, not exactly—about the same price. They may have cost a cent or two more a gallon, but not much more.

Q. 33. About what was the cost or value of that wine when you put it into the tanks?

A. From twenty to twenty-five cents a gallon.

Q. 34. Was it fortified?

A. Yes, sir; we fortified it up generally to eighteen per cent. absolute alcohol.

Q. 35. Before being fortified, what was it worth?

A. From twenty to twenty-five cents.

Q. 36. After it was fortified, what was it worth?

A. We calculated every degree at about two cents. Generally the wines hold from twelve and a half to fourteen per cent.—these heavy wines, and they were fortified up to eighteen per cent., so that a wine fortified costs eight to ten cents more a gallon. We always in our calculations calculate the wine to be worth thirty-five cents a gallon when it went into the tanks inside of the hot-house before it was finished, and when it was finished we concluded it was worth forty cents. On that principle we have calculated for three years in making out our inventories. Some seasons wine is

251 not quite as heavy as others. We have made white wine there that was over fifteen per cent. alcohol natural strength.

Q. 37. What difference did it make whether this wine came from the late grapes or from the early grapes?

A. At the end of the season it has more saccharine matter and less acid, and the less alcohol it takes to fortify it. The later it is in the season the less acid it has, and we want to avoid acid in sherry wine.

Mr. BOONE:

Q. 38. How long have you been acquainted with this process just described and called the *casa de sol* process?

A. We adopted it about three years ago the first time.

Q. 39. How long have you been acquainted with the process?

A. I have heard about it fifteen or twenty years ago, off and on from that time.

Q. 40. Did you ever see the process before you commenced practicing it?

A. No, sir; I am the only man who uses it in this State. The others use all direct heat.

Q. 41. Where did you derive your information regarding the process?

252 A. From old reports from Spain, and also from parties that worked it that way.

Q. 42. Where are those reports from which you derived your information?

A. I don't know. If Mr. Frowenfeld will go to my office and get

a scrap-book in which I have those things entered, that will show. Whenever I read anything that is connected with my business I cut it out and paste it in that book. If I remember right, it was cut from an article in the San Francisco "News Letter," some years ago.

Q. 43. Your house is built especially for that purpose, is it?

A. Entirely. Yes, sir.

Q. 44. You had to hunt a particular location for that house, did you?

A. I just took the southern slope. In Sonoma, where this hot-house is situated, all the cold winds come from the north, and I took a hill that sloped from the north to the south, so that it is protected against the cold north winds.

Q. 45. Then the heat which you apply is natural and artificial heat together, is it?

A. Yes, sir.

Q. 46. To what temperature can you carry the heat in the room by the natural temperature, the heat of the sun?

253 A. About one hundred and twenty-five to one hundred and thirty degrees. I have had it that high, if I am not mistaken. If it gets too warm I open the door a little. I don't want it over one hundred and twenty degrees.

Q, 47. What is the maximum temperature there?

A. It depends upon the heat of the sun, of course. I have got only a thermometer in the shade. I don't take the thermometer in the sun. In the shade it varies from sixty to one hundred and five degrees; sometimes it goes down a little in the winter, but in the summer it is one hundred and sixty degrees sometimes in the shade.

Q. 48. Can you, from an actual temperature of one hundred and five degrees, obtain a temperature of one hundred and twenty degrees in the house?

A. Yes; I have got over that. The inside coating of black paint was put on after we found that we could not get heat enough without it.

Q. 49. How do you manage in the night-time?

A. Keep up a fire, put in a stick of wood or two; sometimes all the stove will hold.

254 Q. 50. You say you first constructed the *the* building and tried it and found you could not get heat enough?

A. No; I say when the building was finished we had only a simple glass top on it, and we found it did not give us heat enough, and we then put a black color on the inside of the glass, knowing that black color attracted more heat, and we increased it considerably.

Q. 51. Did this article which you had read instruct you to put black on the inside of the roof of the building?

A. No, sir; not if I remember. I only know that a pair of black pants are a great deal warmer than a pair of white pants.

Q. 52. Would the process have been a success in that house without the interior being blacked?

A. Of course it would, but it would have taken a little longer. You can make sherry if you only keep it at ninety degrees, but in-

stead of taking four months it would take a whole year; it would take so much longer. Talking about the great heat, I can tell you one incidence. John A. Bauer, my brother-in-law, was there once when it was one hundred and five degrees in the shade. He
255 said, "It can't be much hotter in the hot-house to-day; let's go in there and see." And we went in there and remained in there about a half a minute, and the perspiration just poured down on both of us.

Q. 53. How long would it take to produce sherry at eighty degrees?

A. I don't know; but I should think about a year.

Q. 54. How great a temperature could you get in that house without the glass being blacked?

A. That I don't know.

Q. 55. Don't you know how much you did get?

A. We increased it three or four or five per cent. more by the blacking of the top; I only know that it increased the heat, and as this blacking didn't cost much we have kept it up ever since.

Q. 56. Then if you followed strictly the description given in that article to which you refer as having been published in the "News Letter"——

A. (Interrupting.) I have studied a great deal theoretically and practically, and I had to take my experience to help. That article didn't say much about how the house was to be constructed.

Q. 57. Could you or any other person, by simply following the directions contained in that article in the "News Letter," to which you have referred, have successfully made sherry wine without any additions or improvements of your or their own—I mean by simply following that article and nothing more?

256 A. I believe that after reading that article without my own experience I could not have done it.

Q. 58. You did add material improvements of your own, did you not, after you had read this article, in constructing the building?

A. If I am not mistaken, this article says it is merely a hot-house.

Q. 59. You did add material additions of your own?

A. I only added such additions as a sensible man would to keep the heat in as much as possible.

Q. 60. Did you not make material additions to the description contained in that article referred to, such as the sawdust in the walls and the peculiar construction of the building?

A. I don't think that is in the article; I added that as any sensible man would, constructing a building for such a purpose.

Q. 61. And the blacking on the inside of the glass roof you added yourself?

A. Yes, sir.

Q. 62. Does the article say how the stove should be arranged?

A. No; the article says nothing about the stove, if I am correct. On page 60 of the scrap-book, to which I have referred and which is now before me, there is an article in which this kind of a hot-house and this kind of treatment is spoken of. It says: "Others accomplish the desired object by placing their wines in a kind

257 of a glass house, where they are exposed to the full heat of the day. In the daytime a temperature of 120 to 130 degrees is obtained, which, however, becomes considerably lowered during the night." When I saw that article I concluded that all night I would use a stove. I am satisfied that I have another article here in this scrap-book on this same subject.

Q. 63. In your opinion, Mr. Kohler, and after having the experience which you have had in the treatment of wine by this process, could you practically in this climate treat wine in a house constructed exactly as stated in that article?

A. I don't see why I couldn't. It only says "a glass house."

Q. 64. I ask you if you simply followed that article without any additions or improvements—could you practically make sherry wine by following that article?

A. I don't know how stupid I would be.

Q. 65. What is your opinion of it; if you had no stove and no blacking upon the inside of the roof, but used simply a glass house and placed the wine in that house, could you practically make sherry wine by that process?

258 A. Of course a man could, but he must use a little brains with it. It is the brain that made it complete, and the brain on my part was worth something.

Q. 66. Do you think you could have made sherry wine by that process, simply following the directions contained in that article, without using your brain?

A. No; not unless I put the stove in.

Q. 67. Then you have got to add something?

A. Yes; of course you have got to add something. I have stated that it was a double building and the sides filled up with sawdust in order to keep it warm day and night. By reading books nobody can make wine, but taking that and your experience together that is what enables you to do it.

Q. 68. How would it be in the climate of San Francisco; could you make wine by that process?

A. Yes; you could, only it would cost you more for heat.

Q. 69. Also more for rent, would it not?

A. Yes, sir.

Q. 70. How about insurance; would you have to insure considerably?

A. Yes; if you wanted to keep it insured.

259 Q. 71. It would be a considerably greater expense to treat sherry by this process in this city than in the country, where you have it, would it not?

A. Yes; the expense in the city would be more than in the country.

Q. 72. Do you know what temperature is used in the Estufas, as generally constructed, where the heat is employed slowly?

A. This article says from one hundred and twenty to one hundred and thirty degrees; that is what this article says; on anything used in Spain I could not say.

Q. 73. Can you state, Mr. Kohler, what difference in effect upon

the casks would occur in a process where fuel was used to create the heat and the temperature was maintained at one hundred and twenty degrees and an Estufa such as you have, where the heat is also maintained at one hundred and twenty degrees, where the heat of the sun is principally used?

A. I believe the heat of the sun and the heat of a stove have about the same effect, as far as warping the casks is concerned.

Q. 74. The shrinkage would be about the same, would it?

A. I think so, and the evaporation about the same. There is another article in this scrap-book which speaks much more
260 explicitly on this subject, but I don't know that I can find it; I have got the book so full.

Q. 75. You say the evaporation in your process amounted to from seven to eight per cent.?

A. About that much; yes, sir.

Q. 76. Did you make any practical test of that matter?

A. That has been our experience in three years. The main point with a vintner is to find out what his material costs; if he don't know what his material costs he can't regulate his business or don't know what profit to charge, and we have made it our business to find out what the evaporation is. We have made calculation on the last two years, and, as we continue the process, we take it for granted that the evaporation is about the same.

Q. 77. That has an exposure to the heat of about four months' time?

A. Yes; three to four months.

Q. 78. How long does it take you from the heat of the sun to obtain the necessary heat to heat up the wine?

A. I don't know how long time it is, but where we pump it in we roll it out in the sun and let the sun shine on the casks and warm it a little; we take all natural advantages that we can; the
261 wine is stored in a very cool cellar, and, in order to put it in the sherry-house, we give it the benefit of two or three days warm sun before we pump it into the casks in the house.

Q. 79. That requires considerable handling, does it not?

A. Only rolling it; one man can roll twenty-five pipes in a day in the house the way we are arranged; of course there is some handling to do, but not a great deal.

Q. 80. After the wine is cured—that is, after it has been subjected to the heating process for about four months—you say you then pump out a portion of the wine?

A. Yes; we generally leave about twenty to twenty-five per cent. in the casks.

Q. 81. What do you do that for?

A. It is an improvement on the second batch; that is the sediment that contains the most aroma, and by leaving that in we treat the second batch so much quicker; it is by the Spanish called "the mother of wine."

Q. 82. Then, including the amount of wine which would be cured at one operation, you must calculate that you take out one-fourth less than the amount put in?

A. Yes; we always leave about one-fourth in the casks
262 after the first treatment; we take out just what we put in, less the amount which has evaporated.

Q. 83. Do you insure your building?

A. I have my buildings all insured to about four or five per cent. of their value.

Q. 84. What rate of insurance do you pay?

A. In the country I pay one per cent.; in the city a little more—according to the building.

Q. 85. Your insurance covers this estufa building, does it?

A. No, sir.

Q. 86. Do you insure that building?

A. No.

Q. 87. Why not?

A. Well, I take my chances on that.

Q. 88. Do you know whether or not that building would be insured by the companies at ordinary risks?

A. No; not at ordinary risks; they would charge more for it, because the danger of fire would be greater there than elsewhere, although I had taken all precautions to prevent fire.

Q. 89. Have you ever applied for insurance on that building?

A. No, sir.

Q. 90. Do you know what rate would be charged on a building of that kind?

263 A. No; I have no idea; I don't think that I have asked anybody *that I have asked anybody*, because in the winter we have not got it full; it is only in the summer time that we use it.

Q. 91. Do you pay particular attention to this process yourself, Mr. Kohler?

A. Whenever I am up there I always go in there.

Q. 92. How often are you up there?

A. Sometimes I go up once or twice a month, sometimes three or four times, and then for three or four months I don't go up there at all—just as occasion affords and as my wife will let me go.

Q. 93. You are gradually learning more about the process?

A. Yes; though the process is very simple and very natural.

Q. 94. Is it not a fact, Mr. Kohler, that wines treated by this heating process are better the longer the heating process is kept up?

A. Yes, sir.

Q. 95. It is also true that heat will improve the wine, no matter how long that heat is continued?

A. Well, I suppose there must be a limit to all things; I don't know.

Q. 96. I mean, if you should subject the wines to a heating
264 process for a short time, the wines would be improved, would they not?

A. Yes, sir.

Q. 97. And then, in proportion to the length of time they were subjected to the heat, the sherries would be improved, would they not?

A. To a certain extent; yes, sir.

Q. 98. If you had kept up the heating process in your Estufa for six months, wouldn't the wine have been better than it was after four months?

A. I kept a twenty-gallon package in there for about two years and a half, and that I could have sold at wholesale here at three and a half to four dollars a gallon. I had just one cask that was in there over two years—had the benefit of the heat all the time—natural wine, and that improved so much. Some experts here tasted it, and they said I could sell that at three and a half or four dollars a gallon; it was such a fine quality; but I think if that had that much treatment in the Searle process you couldn't have used it with those pipes that they had.

Q. 99. But if the pipes were made of a material that didn't dissolve and injure the wine, then you think that if wine were treated by the Searle process for the same length of time it would be as good as that wine was?

265 A. Yes, sir.

Q. 100. What was the size of your tanks?

A. We have got packages in there now. We used to have puncheons that held about a hundred and eighty gallons, the first thing, and then we got some casks that we got cheap from New York that held three hundred gallons, and we now put in a thousand gallons more than we did with the other pipes. We have got two tiers of them—two lines of them.

Q. 101. If five thousand gallons is the maximum amount that you have treated at one time, how many gallons of cured wine did you draw from that?

A. All but about twenty per cent., less the evaporation. After the first treatment, if we put in four thousand gallons we draw off about four thousand gallons, less what has been evaporated in the meantime. When we can tell by knocking on the cask that the wine is down to a certain point in the casks we stop drawing it off.

Q. 102. Do you find any difficulty with your cooperage?

A. Not yet; no, sir. Of course they warp a little and shrink a little.

Q. 103. Do the hoops fall off at any time?

266 A. They are driven on so well they can't. I don't remember whether they ever fell off, but I suppose they are driven on again when they are refilled.

Q. 104. Do you know whether or not those casks have been rehooped?

A. Not rehooped, but my foreman may have driven the hoops on if they have become loose.

Q. 105. Do you know whether or not the casks have been fixed over a number of times?

A. They were dried coming around the Horn, and staid five or six days there in the sun, and they were put up carefully, and I think that every year when they are put up they may require a little driving on of the hoops.

Q. 106. That you don't know anything about; that is guess-work?

A. Yes; I don't know how that is of my own knowledge.

Q. 107. Do you know what your cooperage cost you?

A. Yes, sir; about six or seven cents a gallon. We don't take the best cooperage in there, anyway, you know.

Q. 108. Do you know whether or not any establishment of the same kind as this one of yours is in use in the United States?

A. I don't think there is; I don't know of any.

267 Q. 109. Is it a matter of general knowledge that this process can be used for that purpose?

A. Not that I know of; but everybody knows that heat will do good to the wine. Pasteur has stated that in his book. Mr. Curtis has got a patent on an excellent machine for heating the wine up to a certain degree, and then it won't ferment any more.

Re-examination of CHARLES KOHLER by Mr. FREIDENRICH:

Q. 1. If those casks had been frequently rehooped you would have known it by the bills, would you not?

A. They have not been rehooped. I know that. The hoops may have been driven on.

Q. 2. But you are quite sure that they have not been rehooped since they have been in the house?

A. They have not.

Q. 3. So far as you understand, this is the old process used in Spain, is it not?

A. Yes, sir; that is, the main part of it, the heat of the sun. All the improvements I made to it was that while in the cold nights I wanted to keep the heat, and I just put a stove to it.

268 Q. 4. You have not applied for a patent for that process, have you?

A. (Laughing.) Not yet; no.

Mr. BOONE:

Q. 5. Do you know whether or not *no* this process is in use in Spain?

A. The heat of the sun is applied there, as I have read. Whether the heat from the stove is applied there I don't know.

Q. 6. Do you know that a house like this is used in Spain?

A. No; I don't know. I never was in Spain.

By the MASTER:

Q. 7. What is the distinguishing quality of sherry wine?

A. Sherry wine is a wine that has been heated or has been allowed to stand a long time. If you don't heat it you do not obtain this flavor—this nutty almond in the wine—unless you let the wine lie twelve or fifteen years. I have seen ordinary white wine that was made in Sonoma that was called fifteen years old that had a fine sherry flavor.

Q. 8. Is age or the effect of age necessary to convert white wine into sherry?

A. Yes, sir.

Q. 9. Is the application of heat to the wine necessary to produce sherry wine?

269 A. It is not necessary, only it hastens the process. If the heat is not applied it will take a great deal longer time.

Q. 10. What length of time as a minimum?

A. I don't know. I judge generally about fifteen years from the samples I have seen in California, and then these white wines must lie in a warm, dry place.

Q. 11. What would be a fair manufacturer's profit for converting white wine into sherry by your process?

A. I think on large quantities eight to ten cents a gallon would be well enough, say, from five to ten thousand gallons. If anybody wants to make a contract with me I will put up a dozen such houses and I will do it for five cents a gallon and make money, if they will furnish the wine.

Mr. BOONE:

Q. 12. That includes your expenses, does it?

A. Yes. I will pay the expenses of working it, but they must deliver the wine into the house and I convert it into sherry. If they will put the wine in themselves and take it out themselves I will treat it for four months at five cents a gallon.

Q. 13. If you had a large establishment capable of treating a very large quantity of wine, say forty or fifty thousand gallons of
270 wine, could you not treat it cheaper?

A. Yes, sir. I would make it for one or two cents less; of course to treat one batch or two batches it would not pay me to put up a building, but from the spring to the fall I could make money at five cents a gallon if the parties furnished the material and the labor—that is, with my particular apparatus. If I should furnish the labor to pump the wine in and out and furnish the fuel and labor during the treatment I would make a very good profit at eight or ten cents a gallon on the amount of wine that comes out of the house.

Examination-in-Chief of J. M. Curtis on Behalf of Respondent.

By Mr. FREIDENRICH:

Q. 1. You are the J. M. Curtis named in the contract between De Turk and Curtis and Searle in evidence?

A. Yes, sir.

Q. 2. I will ask you have you ever kept an account of the amount of evaporation of wine treated by that process?

271 A. I have the account of the first heating in the store on Jackson street under that contract by the Searle process—that is, I have an account of the number of gallons that went in and the number of gallons that came out. The amount of evaporation was six and thirteen one-hundredths per cent.

Q. 3. That was the first batch treated under the contract?

A. That was the only batch that I saw through under that contract. There was another one put on heating, but it was not completed.

Cross-examination by Mr. BOONE:

Q. 1. Where was this apparatus when that was done?

A. Four hundred and thirty-four Jackson street.

Q. 2. What had you to do with that process at that time?

A. I delivered the wine to Mr. Searle and received it from him.

Q. 3. Your statement here is based on the amount of wine that you delivered and the amount that you received?

A. Yes, sir.

Q. 4. Did you attend to the wine during the treatment?

272 A. No, sir.

Q. 5. Do you know how that waste occurred?

A. Nothing further than it was considered a necessary waste.

Q. 6. Do you know that the entire amount of difference was wasted by evaporation?

A. I don't know but that the wine was stolen.

Q. 7. You don't know but there was an accident and some of it lost, do you?

A. For the purposes of testimony, I don't konw; for the purposes of my own conviction, I do know.

Q. 8. Do you know that all the wine that you delivered went into those casks?

A. I know as well as I know anything that fact.

Q. 9. Do you know it?

A. I know what was measured for going in, what was estimated to go in at the time, and I know how many pipes were received and how many pipes were emptied into these vats, and how many pipes were——

Q. 10. That is not an answer to my question. Do you know that all the wine you delivered to Mr. Searle went into those casks?

A. I know that all the wine they had in the store, four hundred and thirty-four Jackson street, didn't go into the casks. I know that some of it didn't go into the casks.

273 Q. 11. Do you know that all of the wine which came out of those tanks was delivered to you?

A. It was measured——

Q. 12. (Interrupting.) Do you know that all of the wine that came out of the tanks was delivered to you?

A. As well as I know that all that I suppose went in went in. As well as I know, for instance, that a cask that I gauged this morning that was marked "Daneri & Co." is for Daneri & Company.

Q. 13. Did you see the wine go into the casks?

A. A good deal of it.

Q. 14. Did you see all of it go in?

A. Probably not.

Q. 15. Did you see it go out?

A. A good deal of it.

Q. 16. Did you see it all go out?

A. Probably not.

Q. 17. Then all you know is that you saw a portion of it go in and a portion go out?

A. I know that.

Re-examination of J. M. CURTIS by Mr. FREIDENRICH:

Q. 1. You were interested with Mr. Searle in this process?

274 A. Yes, sir. I was interested according to the terms of the contract.

Q. 2. When you say you know that all the wine delivered to Jackson street didn't go into the casks do you base your statement upon that which you knew went into the casks—that is, referring to your estimate of six and thirteen one-hundredths per cent. evaporation?

A. I kept a record of the wine for the purpose of keeping the books for Mr. De Turk and myself upon the matter. I gauged all the wine sent down here by Mr. De Turk for the purpose of making sherry by that process. I kept the records of my gauges, and I had a page in my invoice-book expressly devoted to that, in which I have a gauge of every pipe, with the outage on each pipe as it came down. Out of one hundred and fourteen pipes received that first heating one hundred and nine only were used, I think. I prefer to refer to my record to say that positively. There were five pipes left over, because it was more than the capacity of the casks.

Q. 3. Do you know that those one hundred and nine pipes went into the tanks?

A. I know it as well as I know any business fact.

Q. 4. You were interested in the business at the time?

275 A. Yes; I have no reason to suppose that there was any sale or that any accident occurred.

Q. 5. If there had been an accident during the period or any leakage would you have ascertained it?

A. It would have been my duty to have known it, and should have been the business of Mr. Searle to inform me if he knew of any such thing.

Q. 6. And I understand you to say that you were present when the most of this wine was taken from the casks?

A. I had my office in the same building and occupied a portion of the store myself. The wine was all delivered up there at the store and pumped in. A good deal of it I saw go in, but much of it, I presume, I didn't.

Q. 7. Was this the first batch that was treated there, so far as you know?

A. That was the first batch that was treated under this contract with Mr. De Turk and myself; that was the first batch treated on Jackson street.

Mr. BOONE:

Q. 8. How many casks or pipes were there at that place?

A. Only four casks on the lower floor, and afterwards two were put up on the upper floor.

276 Q. 9. How much did each of those pipes received from Mr. De Turk contain?

A. (Referring to book.) Fifty-five pipes, seventy-seven hundred and fifty-one gallons net. That wine was received from October

10th to October 12th, 1877. That went into one tank. The second tank contained seventy-seven hundred and one gallons; that of Mr. De Turk's wine. This wine was received from various sources, which I will have to explain as I go along. Out of those one hundred and fourteen pipes that I first mentioned to you I have accounted for one hundred and nine. Five pipes, containing seven hundred and forty-six gallons net, were left over. October 19th to 27th, 1877, there was put in the third tank forty-nine pipes, containing sixty-nine hundred and fifty-four gallons, making seventy-seven hundred gallons in that third tank. In the fourth tank there were seventy-seven hundred and sixty-six gallons of De Turk's wine. December 21st I received eight pipes of fortified wine. The entry in my book shows as the result of that first heating thirty-four thousand eight hundred and eighty-nine gallons, having an absolute strength of fifty-nine hundred and seventy-seven and sixteen one-hundredths gallons of absolute alcohol.

Mr. FREIDENRICH:

Q. 10. How many gallons did you take out?

277 A. I received from Mr. Searle thirty-two thousand seven hundred and forty-one and one-half gallons, there being twenty-one thousand and forty-seven and one-half gallons loss.

Q. 11. This thirty-two thousand seven hundred and forty-one and one-half gallons taken out was clear wine, was it?

A. Clear wine and sediments. The sediments were placed in casks by themselves for settling, but it was all estimated.

Q. 12. Does it appear on your memorandum that the sediments were included?

A. I have it on my books how many gallons of clear wine were there. How many gallons were sediment and how much clear wine there was I could hardly tell. I can tell approximately; and there was some six or seven casks of sediment—I presume in the neighborhood of one thousand gallons.

Q. 13. What became of those sediments?

A. The sediments were partially clarified and drawn off. About two or three puncheons of one hundred and fifty to two hundred gallons each was left in the store at the time I went out of the business.

Mr. BOONE:

Q. 14. Don't you know, as a matter of fact, that there were eight hundred gallons of muddy wine left in those tanks, and

278 that it was delivered to Mr. De Turk with the second batch that was afterwards delivered?

A. I don't know that that is possible at all, for the reason that April 24th the whole business was gone over, and they brought in the sherry account and the sherry account balanced for the sake of balancing the business with Mr. De Turk.

Q. 15. That was simply for the first batch, was it not?

A. Yes, sir.

Q. 16. There was a second batch, was there not?

A. There was a second batch treated, but I had nothing to do with that.

Q. 17. Do you know whether or not there was any muddy wine left from that first batch?

A. I am very certain there was not.

Q. 18. Do you know whether there was or not?

A. I know, probably, better than anybody who says there was.

Q. 19. Do you know whether there was or was not?

A. I didn't go into the tanks.

Q. 20. Then do you know whether there was or not?

A. As I have no recollection of looking into the tanks at all, I cannot say that I know certainly; but from other evidence I feel perfectly convinced of the fact, and I will show you the evidence. I know that there were a number of pipes of this wine that was
279 of very thick, heavy, muddy sediment. This wine was clarified in those large tanks in which it was heated. The clarifying matter with the lees of the wine was put into small tanks and left to settle. There was one batch of about one hundred and fifty gallons drawn off, without any clarification at all. A portion of it was filtered and saved, whatever wine there was. If there had been any wine left in the big tanks at all it was left after this—a heavy, muddy, thick sediment that won't run through a faucet.

Q. 21. What did you do with those lees that were so thick that they would not run through the bung-hole?

A. Some of the lees were filtered out, and I think some still staid in the casks at the time I left the store.

Q. 22. How much wine was delivered to Mr. De Turk at that first treatment and paid for at the rate of fifteen cents a gallon?

A. Twenty-five thousand and forty gallons were delivered to Mr. De Turk in the store. There were sixty-four hundred and eighty-four and one-half sold, and twelve hundred and seventeen, theoretically, remained but not actually remained. Mr. Searle was paid the lump sum of five thousand dollars without regard to what the quantity was, that being supposed to be within the figure or about the figure.

280 Q. 23. What became of that twelve hundred and seventeen gallons that you say was reserved?

A. I didn't say that it was reserved. I say that twelve hundred and seventeen gallons was received and entered, or sold at retail, or lost by deposit of lees.

Q. 24. How about the sixty-four thousand eight hundred and forty-two and one-half gallons?

A. They were sold. Twenty-five hundred gallons had been hypothecated to Dreyfus and Company, and the balance was sold and a part of it was supposed to be lost.

(Continued, by agreement of counsel, to Wednesday, 14th inst., at 10 o'clock a. m.)

WEDNESDAY, *November* 14th, 1883.

At the request of complainants' solicitor, communicated by telephone to respondents' solicitor, further continued to to-morrow, 15th inst., at 10 o'clock a. m.

281 THURSDAY, *November 15th*, 1883.

Present: Mr. Dickinson, solicitor, and Mr. Boone, of counsel, for complainant; Mr. Freidenrich, solicitor, and Mr. McKinne, of counsel, for respondent.

Examination-in-Chief of Benjamin Dreyfus on Behalf of Respondent.

By Mr. FREIDENRICH:

Q. 1. State your name, age, place of residence, and occupation.

A. My *age* is Benjamin Dreyfus; I am fifty-nine years old; I live in Anaheim, Los Angeles county, and I am a wine grower and wine maker by occupation.

Q. 2. You are one of the defendants in this action and a member of the firm of B. Dreyfus and Company?

A. Yes, sir.

Q. 3. How long have you been in the wine-making business and where?

A. Since 1857, in California.

Q. 4. Have you charge of the vineyards of the defendants?

282 A. Yes, sir.

Q. 5. Where are they?

A. They are situated at Anaheim, Los Angeles county, and we are interested in vineyards in San Bernardino county on a ranch called Cocamungo.

Q. 6. Your branch of the defendants' business is to attend to the wine making?

A. Yes, sir.

Q. 7. And you live at the vineyards?

A. I do.

Q. 8. Are you familiar with the process of making sherry?

A. I am.

Q. 9. Has your house been engaged in making and dealing — sherries?

A. Yes, sir.

Q. 10. For how long a period?

A. I commenced to make sherry here in 1865—between 1865 and 1866.

Q. 11. Have you continued the manufacture of sherries from that time up to, say, 1880?

A. Yes, sir; more or less.

Q. 12. Have you during that time used more than one process?

A. I have not, personally.

Q. 13. About how much sherry did you make per annum during that period, and particularly for, say, five years prior to 1880?

283 A. I have not taken such a very close account of it, but I think we made from 1876 to 1880 in the neighborhood of fifty thousand gallons per annum, on an average.

Q. 14. Have you made any by this process since that time?

A. I have not been here since, and do not know what was made here.

Q. 15. State the process which you have adopted and used for the manufacturing of your sherries and also the length of time that it took to make the sherry.

A. We used to take four pounds of sugar to one hundred and fifty gallons of dry white wine, and we melted the sugar first thoroughly, and then we added wine to it and made it a liquor and put it into large vats and put other wine with it—various kinds of wine—in order to get a certain taste to the wine similar to sherry. We put it into large vats, say, of a thousand gallons each. We filled them up and cleared the wine afterwards. Within twenty-four hours afterwards we tasted it and took away from it or added other kinds of wines, from which we got a certain result. The whole process of clearing took about a week or ten days. The clearing was done by adding gelatine or isinglass with it and working it right through.

284 The gelatine or isinglass falls to the ground and takes all impurities with it. Then it was drawn off into other casks, and it was then ready for the market.

Q. 16. What was the expense of manufacturing the sherry by that process?

A. From two and a half to three cents a gallon, that including everything except the raw wines; included the sugar, the gelatine, and the labor.

Q. 17. Are you familiar with the product of the process known as the Searle process?

A. Yes, sir.

Q. 18. How does that sherry compare in quality to the sherry which was made by your process?

A. I like our sherry as well. We found as good a ma-ket for our sherry as we done with Mr. Searle's sherry.

Q. 19. Was there any perceptible difference at all?

A. None that I know of.

Q. 20. The one was, in your judgment, just as good California sherry as the other?

A. Yes, sir.

Q. 21. And sold for as much in the market?

A. Yes, sir.

Q. 22. Do you know Isaac De Turk?

A. I do.

Q. 23. Do you remember having any conversation with him

285 in relation to the Searle process of making sherry.

A. Yes, sir; we had several conversations together.

Q. 24. I will ask you whether you did or did not say to Mr. De Turk that you were willing to pay John Searle fifteen cents a gallon for making sherry for you provided he would agree to make not to exceed fifty thousand gallons per annum, or whether you ever used

language to that effect in any conversation that you had with Mr. De Turk, or whether in any conversation you have had with him you stated that you were willing to pay or had offered to pay Mr. Searle fifteen cents a gallon for making sherry for you?

A. No, sir; I never had any conversation in regard to the prices of Mr. Searle's sherry, of how much he would make it for. All the conversation I did have in regard to it was with Mr. Searle himself.

Q. 25. I refer to your conversations had with Mr. De Turk as to what you had offered to do with Mr. Searle.

A. No, sir; I didn't have any such conversation with him.

Q. 26. Are you quite positive that you never did mention any such price to Mr. De Turk?

A. Yes; I am.

Q. 27. What makes you confident of it?

286 A. Mr. Searle made sherry for us for seven and a half cents per gallon by his process.

Q. 28. When was that?

A. It was some time in 1877 or 1878 perhaps; I don't recollect exactly the time, but I remember very distinctly that I made the bargain with Mr. Searle myself. If I could have got it made for seven and a half or eight cents I don't believe I would tell a man—I know that I wouldn't tell a man that I would pay fifteen.

Q. 29. Did you ever offer to pay Mr. John Searle fifteen cents a gallon for making sherries for you?

A. No, sir.

Q. 30. And you never stated that or anything to that effect to Mr. De Turk?

A. No; I don't believe we ever had a conversation in regard to that.

Cross-examination of BENJAMIN DREYFUS by Mr. BOONE:

Q. 1. When did you first commence to make sherry wine?

A. I think it was between 1865 and 1866?

Q. 2. Where was that?

A. In San Francisco.

287 Q. 3. Who attended to the business?

A. I had some men employed, and I myself attended to it.

Q. 4. As early as 1866?

A. Yes, sir.

Q. 5. How many men did you employ at that time in connection with this process?

A. No men particularly employed at that time for that. Just as they had time I took workmen to attend to it. I generally had two attending to the melting of the sugar, to stir it so that it wouldn't burn. There was no particular men employed to do that; whoever had time had to do it.

Q. 6. The quality of California wine has improved considerably within the last ten or fifteen years, has it not?

A. Yes, sir.

Q. 7. What was the reputation of California wine at that time, as compared with the reputation at this time?

A. It didn't have as good a reputation as it has now.

Q. 8. All the wines which you sold then were inferior in quality, were they not, to wines sold now?

A. Yes, sir; they were, with few exceptions.

Q. 9. The quality of wine since 1880 has been better than
288 than that of wine that was produced in California before that time?

A. Yes; I have no doubt.

Q. 10. It is only recently that California wine has taken a high stand as a drinking wine?

A. Since we have become accustomed more to make it and to treat it. The grapes which they use now are, perhaps, better adapted to the soil and climate than they were. Formerly most of the wines were mission wines, and now they have various kinds of grapes.

Q. 11. How about the shipping of wines? Was the amount of wine shipped from the State anything near what it has been during the last two or three years?

A. No, sir; it was not. There was no such wine produced.

Q. 12. How did the early California wines compare in the market with European wines--French wines?

A. They did not compare very favorably.

Q. 13. It was hard to sell California wines at that time?

A. Yes, sir.

Q. 14. How is it at present, within the last three years?

A. They compare very favorably. In order for the public to appreciate a wine it is necessary that they should first learn and become accustomed to its taste.

289 Q. —. Wine improves by age, does it not?

A. Some does; if it is made right it does.

Q. 16. It is not fit to drink when it is first pressed out of the grapes, is it?

A. It is generally not drunk then.

Q. 17. It is not marketable wine?

A. No, sir.

Q. 18. It becomes more marketable as it gets aged, does it not?

A. Yes, sir; it does. Wine, when it is first made, is not drunk generally; age improves the quality.

Q. 19. How long ought ordinary wines of all kinds to be kept before they are put on the market?

A. It is generally shipped here in this country after it is six months old; sometimes they ship it sooner.

Q. 20. They even ship wine before it is fit for the market, don't they?

A. A great many people do.

Q. 21. And how long, as a general thing, is it before it is fit for market, to be sent out to fill orders?

A. When wine is thoroughly fermented and clear it is fit to be shipped and can be used, because it has got no bad effects on a person any more. The only bad effect that wine has on a person is

when it is not thoroughly fermented and has some sugar left
290 in it; then it is very liable to give people a headache; but when wine is thoroughly fermented it is fit for use in three months after it is made.

Q. 22. That is, it don't injure any one?

A. No.

Q. 23. But could you sell it? Would a man who is producing wine sell it to his customers?

A. Yes, sir.

Q. 24. Would a producer pay the price for it that he would for old wine?

A. No, sir.

Q. 25. How long does it take wine, as a general thing—any ordinary wine—to arrive at its best condition?

A. It is a good deal owing to the nature of the wine. There is, for instance, some classes of wine that come under my observation which improves by age, and others don't improve so much.

Q. 26. Is there not a good deal owing to the conditions under which it is kept—whether the climate is dry or moist, whether the weather is cold or warm?

A. Wine generally keeps very well in an even temperature. For instance, in San Francisco, where it is near even all the year around, wine keeps pretty well; but where there is a dry, warm climate people keep their wine generally in cellars, where it is more
291 moist and the temperature is lower.

Q. 27. But if the temperature is uniform and high the wine improves faster, does it not, than when it is cold?

A. Yes, sir.

Q. 28. Is this sherry process which you mentioned as having used the one first practiced by you? What was the object of placing sugar in the wine?

A. To give it more body.

Q. 29. What do you mean by giving it more body?

A. A sherry, generally, is a heavy-bodied wine. Our California wines have not got the body of wines which are made in Spain. They have got a certain grape there from which they make different wines from what we make. Our wine was too thin to make sherry of, and in order to give it more body—to make it a rounder wine—it was necessary to add more sugar to it.

Q. 30. If the wine was evaporated wouldn't that add body to it—if the water was evaporated out? If it was subjected to a process of evaporation would it not get body?

A. I don't know whether it would or not. The water does not evaporate alone. The evaporation is general. If you weigh
292 wine, for instance, after it is through all fermentation and it weighs twelve per cent.; if you weigh it five years after, it weighs twelve per cent. yet in most instances.

Q. 31. The clearing or refining of it does not affect its weight?

A. It does not, because we don't use anything with it which might weaken it. After it goes through the refining process it might taste a little weaker, but that would be because of the impur-

ities being taken out. It don't lose any of its alcoholic strength by clarifying.

Q. 32. The impurities which are removed from the wine originated in it, a part of that wine, did they not?

A. Yes, sir.

Q. 33. What experience have you had in evaporating wine?

A. Wine generally evaporates by natural evaporation.

Q. 34. What experience have you had in artificial evaporation of wine—that is, suddenly or in a short space of time—producing such a temperature that the wine would evaporate quickly?

A. I have no experience in that.

Q. 35. Do you know what the result would be in such a case as that?

293 A. No, sir; I have never tried it, and do not know anything about it.

Q. 36. The only thing you did in converting this wine to sherry was to place the sugar in the wine and stir it up?

A. After it was dissolved; yes, sir.

Q. 37. And that the sugar was simply placed in there to give body to the wine?

A. Yes; we used also a little flavoring with it.

Q. 38. What did you use flavoring for?

A. To aid it; make it similar to the sherry taste.

Q. 39. That is what you would call a doctored wine, is it?

A. I don't know that it is what you would call a doctored wine or not; everything that goes into it is perfectly natural.

Q. 40. Still it is a doctored wine; it is made by adding to it outside ingredients?

A. In making wine there is sugar used often. Take, for instance, grapes which do not contain sufficient saccharine matter, and they use sugar with them in order to make them ferment.

Q. 41. But they only use a small percentage of sugar?

A. It is according to how strong they want to make the wine.

294 Q. 42. They don't use anything like the *por*portion of sugar that you used in making this sherry?

A. No.

Q. 43. This flavoring which you put in there was something that was intended to give it a sherry flavor?

A. Purely.

Q. 44. The flavor of the wine, then, was obtained entirely from the flavoring and the sugar that you put in there?

A. Not entirely; it aided it.

Q. 45. You say that immediately after putting in the sugar and the flavoring it was sherry?

A. Yes, sir.

Q. 46. Would it have been if you had not put in the sugar and flavoring?

A. No, sir; it would not.

Q. 47. Then the sherry flavor comes entirely from the sugar and the flavoring?

A. And from the wine we used. We use various kinds of wine,

and all of them combined aid in making it a wine similar to sherry. Of course, we use the sugar and we use the flavoring, and we use the various kinds of wines in order to obtain a better result.

Q. 48. Then it was the addition of these various substances that got the sherry flavor, was it not?

A. Yes, sir.

295 Q. 49. Then it is not what you would call a doctored wine, in the common parlance of liquor dealers?

A. We don't call it that.

Q. 50. Is it not, as a fact, a doctored wine?

A. There was nothing impure in it.

Q. 51. That is not the question. Is it not what is called among liquor dealers a doctored wine?

A. It might be called so; I have never heard it by that name.

Q. 52. In order to accomplish this process successfully you had to use special wine, did you not?

A. I did.

Q. 53. You could not take any ordinary white wine from any grape and make sherry out of it by that process, could you?

A. Oh, yes; I did. I used the ordinary mission wine.

Q. 54. That is, you simply added that as one of the ingredients in the manufacture of the sherry?

A. Oh, no; that was the principal wine used.

Q. 55. Could you take any white wine, and by means of this addition of sugar convert it into sherry?

296 A. I could not. We had to have wine which was free of acid. We could not use wine that had too much acid.

Q. 56. Could you take a mission wine and, by simply adding sugar and flavoring, convert it into sherry?

A. I have, often.

Q. 57. Without the mixture of any other wine?

A. Yes, sir.

Q. 58. Simply by adding the sugar and flavoring?

A. Yes, sir.

Q. 59. Wouldn't you call that doctored wine?

A. I would not call that doctored wine.

Q. 60. Would it not be, as a matter of fact, a doctored wine?

A. It might be called a doctored wine, but we never call it so.

By the MASTER:

Q. 61. Are there any wines which you do call doctored wines?

A. I don't know anything about them.

Q. 62. Did you ever hear of doctored wines?

A. I have.

Mr. BOONE:

Q. 63. What class of wines was it that you heard called doctored wines?

A. I have heard of people making wine without having any grape juice with it?

297 Q. 64. So you consider any wine which has grape juice with it not a doctored wine, do you?

A. No; not always; they might use a little grape juice.

Q. 65. How much grape juice would you think was necessary to be used in order that it should not be a doctored wine?

A. I don't know anything about that kind of wines; I never made any.

Q. 66. What becomes of the sugar when you put it into the wine?

A. It absorbs; it is embodied with the wine.

Q. 67. Does it undergo any chemical change in the wine?

A. The wine is fuller bodied; I do not know of any other change.

Q. 68. Is not the sugar converted into alcohol in the wine?

A. No, sir; not that sugar.

Q. 69. Is not any sugar when it is dissolved and put into wine converted into alcohol? Is not that the chemical change which takes place?

A. I don't believe that that change takes place in the sugar; I believe that the alcoholic strength is taken away from the sugar after it is burnt; it does not contain so much alcohol any more.

298 Q. 70. State how you prepared your sugar for putting into that wine.

A. We put it into a kettle and stir it up under a slow fire until it is almost burnt; a person can smell when it is burnt.

Q. 71. Then you convert the sugar almost into caramel, do you?

A. Yes; almost; it is almost as dark as caramel.

Q. 72. Then it is not sugar when you put it into the wine; it is a kind of caramel, is it not?

A. No; it is not sugar when we put it into the wine; it is in a liquid state.

Mr. McKINNE:

Q. 73. You call that burnt sugar, do you?

A. Yes, sir.

Q. 74. The character of the sugar is changed; it is like caramel?

A. Not quite as dark as caramel.

Q. 75. Then another result which you obtain from placing that burnt sugar in the wine is to color the wine, is it not?

A. It colors the wine a little.

Q. 76. Brings it to the color of sherry?

A. Yes, sir.

Q. 77. That is the object of burning it, is it not, to get it to that color?

A. I don't know that that is the object.

299 Q. 78. You could not get that color if you did not burn your sugar, could you?

A. Oh, yes; you can get the color; you can let it burn more and make it darker.

Q. 79. I say the object of burning the sugar is to get the wine to that color?

A. Yes; and to give it body.

Q. 80. If the sugar was not burnt to that color could you make sherry wine by the addition of sugar and flavoring extracts?

A. I have never tried it; I don't know what it would make; perhaps it would set the wine to fermenting, and that it would take a very long time to be fermented.

Q. 81. You know of your own knowledge, don't you, that you have to get the sugar colored to make sherry by that process?

A. Yes, sir.

Q. 82. And if you don't get the color either by burnt sugar that you would have to add some other ingredients to get it to that color?

A. Yes, sir. Well, we have wine, for instance, that is almost a sherry color; I don't think it is quite necessary to have burnt sugar with it, because you can take wine of a dark color and it would have been the same color as sherry without the addition of sugar.

By the MASTER:

Q. 83. What is your chief object in adding that sugar?

A. To give it body.

300 Mr. BOONE:

Q. 84. The chief object is to convert the wine into sherry, is it not?

A. Yes, sir.

Q. 85. But it is not sherry after you put the sugar in; you have to add some extracts to give it flavor, don't you?

A. Very often we add something to it to mix it.

Q. 86. And then you have to mix different wines together to get the proper result?

A. Yes, sir.

Q. 87. What would be the result if you should attempt to mix your wines together, and the wines should happen not to be of that character which make a sherry; you would spoil your wines, would you not?

A. Undoubtedly.

Q. 88. What strength is wine made by that process when it is ready for use?

A. It contains from fifteen to eighteen per cent. of alcohol.

Q. 89. Do you add any alcohol to the wine during the process?

A. I do.

Q. 90. You have not mentioned that before, have you?

A. I have not.

Q. 91. How much alcohol do you add to the wine?

301 A. That is owing to the alcoholic strength of the wine. For instance, you have got wine which contains fifteen per cent. alcohol, and you only add one or two or three per cent., according to the strength that you want to make your wine. The less alcoholic strength the wine has that you use the more alcohol you need to get it to a certain strength.

Q. 92. Then you have got to test your wine to get the strength, and then add alcohol to get the desired strength?

A. Yes, sir.

Q. 93. What is the strength of wine before you commence the treatment of it to convert it into sherry?

A. I have used wine already which weighed from fourteen to fifteen per cent., but the majority weighs sometimes twelve or thirteen. We generally select the heaviest wines we can find.

Q. 94. If the wines were light you would have to use a very much larger proportion of alcohol, wouldn't you?

A. Yes, sir.

Q. 95. Then you have got to bring it up to about eighteen per cent., have you?

A. Generally it weighs that much when it is shipped.

Q. 96. What kind of alcohol do you use in this process?

302 A. I used to buy cologne of spirits.

Q. 97. What is the result of adding cologne of spirits to wine?

A. It gives it much more alcoholic strength.

Q. 98. How long have you kept wines made by this process?

A. I didn't take no particular notice of it. I haven't kept it for no great length of time.

Q. 99. Do you know whether or not it improves with age?

A. It does.

Q. 100. How do you know?

A. Well, I have had it, for instance, for a year or so, and I found an improved wine. I found an improvement in it after it was made six months.

Q. 101. Don't you know, as a matter of fact, that alcohol in that form added to wine would, in the course of time, turn it to whisky?

A. I have not found it so.

Q. 102. Do you not know, as a matter of fact, that wine made in that way, by the addition of cologne of spirits, would deteriorate, as a wine, from the very moment it was made as long as it was kept?

A. No, sir.

Q. 103. Have you had any experience in that regard?

303 A. Undoubtedly I have.

Q. 104. Just state the extent of your experience.

A. I kept wine made in that way from six months to a year, and I found it was invariably better after it laid for some time than it was when it was first made.

Q. 105. Was anything done to that wine in the meantime? Was any wine added to it or was there any change in its ingredients?

A. No.

Q. 106. Then the longest you kept it after it was made is a year?

A. About that.

Q. 107. Might not have been that long?

A. Might have been a little less; might have been a little more.

Q. 108. Do you know what that wine would be five years after it was made?

A. I do not.

Q. 109. The ordinary old method of making sherry wine is to make it and allow it to stand for a number of years, is it not?

A. I am not so very well acquainted with that, but the ordinary

way of making sherry in Europe is where they have got a basis for making wine for sherry uses. That basis of sherry is allowed to become very old, and then they use other kinds of wine and mix with this in order to make sherry.

304 Q. 110. That is a mixed wine?

A. Yes, sir.

Q. 111. Do you know what is meant by the cold process of making sherry?

A. The one that I use.

Q. 112. What is the natural process of making sherry wine?

A. I have only that from hearsay. We had an expert from Spain to make sherry for us, and he explained that to me. He explained that in Spain they had this basis of sherry and used that. That basis is allowed to lie for a century almost, and according to the quality of wine that they want to make they would use the quantity of that basis. The finer the quality of the wine the more of that basis of that wine they use.

Q. 113. You never made wine by that process, by mixing this basis of the wine with other wines?

A. I have been doing that for the last four or five years. I have got some basis of wine that I use for that purpose. I have made wine of that and shipped it to our house.

Q. 114. Do you know what the nature of the change which wine undergoes by allowing it to stand for a great length of time for the manufacture of sherry wine?

A. No; I have not sufficient knowledge. This chemical change in the structure of the wine which is made by allowing it to lay.

305 Q. 115. Yes.

A. It generally improves it.

Q. 116. The wine ripens, does it not?

A. Yes, sir.

Q. 117. When you add your ingredients to the wine does any such chemical change take place in the wine as takes place when it is allowed to stand for a great length of time and undergo its own change?

(Obj. Objected to by respondent and withdrawn.)

Q. 118. When did you stop making sherry wine by this process you have described?

By Mr. FROWENFELD:

A. We are still making it, and in about the same quantity as ever, and have made about the same quantity right along.

Q. 119. Then when you used the Searle process you made about double the usual quantity of sherry wine?

By Mr. FROWENFELD:

A. Yes; I should judge so. The business has increased right along. The making of it by the Searle process didn't cause us to quit making it by this process.

Q. 120. Do you know anything about the Searle process?

By Mr. DREYFUS:

A. I have been to his house, but I never inquired into it.

Q. 121. Which was the most expensive process—that or yours.

306 A. I don't know. Mr. Searle's process was higher, from the fact that we could make it for three cents, and Mr. Searle we paid seven and a half cents.

Q. 122. It is very much more expensive to make it by the Searle process, is it?

A. Yes, sir.

Mr. DICKINSON:

Q. 123. Mr. Dreyfus, how long did you know John Searle, now deceased?

A. I think I made his acquaintance in 1876 or 1877, between them two years.

Q. 124. Was that when you first met him?

A. Perhaps I met him before that, but I don't recollect distinctly. I had no business with him before.

Q. 125. You knew John Searle very well in the latter years of his life, did you not?

A. I got very well acquainted with him; yes.

Q. 126. You used to talk with him a great deal about his process, didn't you?

A. No, sir.

Q. 127. Did you have any conversation with him?

A. Oh, yes. He was telling me about his process, that he had it in tanks, and so forth. At that time he had an establishment away out of town, and he invited me to go out there, but I never was out there to his place; but when he came to Jackson street I used to pay visits there whenever I passed by there.

307 Q. 128. He never made any sherry wine for you on Jackson street, did he?

A. I believe he did.

Q. 129. I want you to be careful about that—did he?

A. I know we sent wine out to his house; I don't know where it was. The draymen took it out to a distance; I know that.

Q. 130. Don't you know as a matter of fact that no wine was made for you at the Jackson street house?

A. We got wine from the Jackson street house and we paid for it.

Q. 131. From whom did you buy it?

A. We had the agency; that was it. We had the agency of Mr. Searle's sherry made by him; we shipped the wine.

Q. 132. Do you mean to say that you shipped wine for John Searle himself, or was it for Mr. De Turk?

A. It was Mr. De Turk's wine; Mr. Searle made it.

Q. 133. What quantity of wine did you send out to Mr. Searle to be converted into sherry for you?

A. I think he made us twice sherry, or more; perhaps five or ten thousand gallons altogether—not over that—at two or three different times within four or five months, or six months.

Q. 134. How came you to send this wine out there; what were the circumstances?

308 A. Mr. Searle made all his sherry at that time out there.

Q. 135. Do you mean to say that he was carrying on a regular business of curing sherry at that time?

A. I don't know what business he done, but he made that sherry for us out there.

Q. 136. Was he doing a regular business at it or was he experimenting, testing his process?

A. It was not an experiment any more, because he took our wine and said that he would make sherry out of it.

Q. 137. Had he ever experimented with any of your wine?

A. I didn't give him any to experiment with, I don't think.

Q. 138. Did you not contract with him for the curing of this wine?

A. I did.

Q. 139. And what price did you pay?

A. Paid seven cents and a half.

Q. 140. You are sure of that?

A. I am.

Q. 141. Seven cents a gallon was all that you ever paid for any of that which he made; that was the highest price that you paid?

A. Yes, sir.

Q. 142. Your books will show that transaction, will they not?

A. I have no doubt.

309 (Demand for books.)

Mr. DICKINSON: We will ask to have the books produced showing the account with John Searle relating to the curing of this sherry.

Q. 143. Did you have any negotiations with Mr. Searle after he moved to the Jackson St. house?

A. I think I sold him some angelica wine.

Q. 144. Are you quite certain about selling Mr. Searle any wine after he moved to Jackson street?

A. I am.

Q. 145. You did sell him wine?

A. Yes, sir.

Q. 146. To what extent?

A. Not a great deal.

Q. 147. What kind of wine was it?

A. Angelica.

Mr. FREIDENRICH:

Q. 148. What is this paper now shown you?

A. It is a bill by Mr. Searle against B. Dreyfus and Company for preparing sixteen hundred gallons of wine. It is dated April tenth, 1877.

Q. 149. I will ask you if that is for some of the sherry wine which you say was made by Mr. Searle for your house?

310 A. It is. This is the original bill rendered to us by John Searle.

Q. 150. What is the check now show you?

A. It is a check upon the First National Gold Bank, issued by B. Dreyfus and Company in favor of John Searle, bearing date April sixteenth, 1877, for one hundred and twenty dollars, payable to John Searle or order. That is a check issued by our house on the day it bears date.

Q. 151. Was this check in payment of this bill?

A. Yes, sir.

Q. 152. Was this check paid by the bank?

A. Undoubtedly. It was returned to us as paid.

(Stip.) It is admitted by complainant that the endorsement of John Searle upon the back of the check referred to is the genuine signature of John Searle.

(d. e.) The bill and the check above referred to, Ex. 1 & 2, are introduced in evidence by respondents and marked, respectively, "Respondents' Exhibit- 1 and 2."

Q. 153. There were other batches cured for you besides for which this check is a payment?

A. I think there was one or two more.

Q. 154. Are you certain as to that?

A. I think there were one or two more.

311 Q. 155. Can you tell whether the other was cured before or after this batch?

A. I cannot tell; perhaps the other was done before.

Q. 156. You are positive that there were two batches besides this one?

A. One or two more, I think.

Q. 157. What did you pay for the other batches?

A. The same price as this.

Q. 158. Have you the bills for them?

A. I don't know where they are.

Q. 159. There would be a book account aside from these bills, would there not?

A. I have no doubt; yes, sir.

Q. 160. I will ask you if this batch referred to in the bill just put in evidence was not cured by John Searle for you for the purpose of showing what he could accomplish, the quality of wine which he could turn out? In other words, was not this a test lot—a single tank full cured by Mr. Searle for the purpose of showing you what he could do, what quality of wine he could make?

A. Very likely it was.

Q. 161. And about this time, and before he finished his Jackson street arrangement there, were you not negotiating with him with regard to making a contract for the curing of wine for you?

312 A. Oh, yes; we talked the matter over very frequently.

Q. 162. Had a great many talks about it, did you not?

A. Yes, sir.

Q. 163. This wine referred to in this bill just introduced in evidence was cured upon McAllister street?

A. I think so.

Q. 164. That is, it was not cured on Jackson street?

A. No.

Q. 165. When he went to Jackson street that was an entirely new establishment?

A. Yes, sir.

Q. 166. The tanks and everything were all new?

A. I don't know whether he—may have—moved the old tanks or not.

Q. 167. Did you not go to the place uptown where he was curing it?

A. No, sir; I was upstairs on Jackson street once.

Q. 168. You were never in his factory until it was on Jackson street?

A. No, sir; I came to that establishment almost every week.

Q. 169. Did you have any talk with him at all as to the quantity of wine that you were willing to have cured by his process at any price?

A. No; we always spoke in general terms about this wine. We didn't speak about any certain quantity. Perhaps it was mentioned that he could cure, I believe, thirty-five thousand
313 gallons at a time.

Q. 170. When he went over on Jackson street that was the first time that he had ever undertook to make a business of it, was it not?

A. Yes, sir.

Q. 171. This other place he had was more for the purpose of experimenting and finding out what his process would do?

A. I believe so. He made sherry before out there. I don't know if he experimented with it or not.

Q. 172. He did not make it in large quantities out there, did he?

A. No; he didn't make it in large quantities.

Q. 173. It was not floated on the market and he did not have contracts with anybody to furnish the wine, did he?

A. He said to me that he furnished several people with sherry.

Q. Who else did he furnish with sherry besides you?

A. I don't know. He sold it to liquor houses here.

Q. 175. Do you know of his having cured wine for anybody else but yourself—that is, for any wine-house in that establishment on McAllister street?

A. No; I do not know that.

314 Q. 176. And he had not manufactured, to your knowledge, any large quantities?

A. No; I don't think he did.

Q. 177. When he moved on Jackson street he started in the business and you and he were negotiating. What was said between you as to the price for curing wine over there?

A. We talked once about it, that we should furnish it and be in-

terested in the proceeds—in the profits. We had various conversations in regard to it. There was really no price spoken of at that time. We always spoke about the wine, either that we should have the profits or that we would take the agency for it and sell for him.

Q. 178. You never made any contract with him at all, did you, either to take the agency or to share the profits?

A. No, we did not, because while we were speaking of it Mr. De Turk had arranged with him.

Q. 179. Was anything said between you as to the quantity of wine which the market would bear at that time per annum?

A. No; we thought there was a good demand for sherry.

Q. 180. You were making at that time about fifty thousand gallons a year by your process?

A. Yes, sir.

315 Q. 181. Did you have any difficulty at that time in disposing of that quantity of fifty thousand gallons a year?

A. No, sir.

Q. 182. And would the market stand more than that?

A. Yes; oh, yes—that is, we never run short of it, but there was no great surplus in the market.

Q. 183. How much would your sales of sherry average during the five years from 1875 to 1880?

A. I don't know.

Q. 184. Would they amount to upwards of fifty thousand gallons per annum?

A. Yes; we sell more than that.

Q. 185. After he went on Jackson street could you get sherry made by Mr. Searle before he made the contract with Mr. De Turk for seven cents a gallon?

A. I did not ask him for any more; we only spoke in relation to going into the business.

Q. 186. Did he ever offer to make it for that price after he got to Jackson street?

A. No, sir; we never spoke about the price there; we only spoke in general terms how we would arrange it to make sherry.

Q. 187. At the time that you furnished this wine from which this sherry was made for you, what knowledge had you as to

316 whether wine could be cured by this process or not?

A. Mr. Searle gave me a sample of what sherry he made, and I judged from that.

Q. 188. Is there a difference in wines from making sherry? The wine is different made from the same kind of grapes coming from different parts of the State, is it not?

A. I can't say that it is; I have used wine from Los Angeles county and I have used wine from Sonoma county, and both of them were well adapted for it.

Q. 189. Were they alike?

A. Not exactly alike.

Q. 190. This wine which Mr. Searle showed you; do you recollect where he procured the wine from from which that was made?

A. No, sir.

Q. 191. Was there no conversation between you as to that?

A. Yes; he spoke to me once in regard to the wine which he received from the Lake Vineyard Company, in Los Angeles county.

Q. 192. What kind of wine was it that you furnished him; where was it produced?

A. There was a part from Los Angeles county and part from Sonoma.

Q. 193. Was anything said between you as to its being an experiment to some extent with this wine, as to whether it would
317 make sherry as well as the wine which he had used?

A. No; there was nothing said in regard to an experiment, because I showed him the wine which I was going to furnish him. He was at our place, and he told me that he thought it would do.

Q. 194. Do you know what Mr. Searle charged Mr. De Turk for curing wine?

A. No, sir.

Q. 195. Did you never hear?

A. No, sir; I don't know anything about the contract between Mr. Searle and Mr. De Turk or the price that Mr. De Turk was to pay.

Q. 196. In any of your conversations with Mr. Searle did Mr. Searle ever mention to you the price that he was willing to cure wine for—the time of your negotiations with him?

A. No; he never spoke about the price.

Q. 197. He might have mentioned to you the price at which he was willing to cure wine for you under his process?

A. No, sir; not after he got in Jackson street.

Q. 198. Did you ever ask him what he was willing to do it for?

A. No, sir; I never did. We always spoke in regard to making the wine that both would be interested.

318 Q. 199. Will you examine your books and the old bills at your office in order to ascertain whether you furnished any wine to be cured by Mr. Searle's, or whether you have any more bills from him?

A. I will do so.

Q. 200. I will ask you whether, at the time you arranged with Mr. Searle to cure this batch that you have produced the bill for, he had ever told you what it cost him to do it?

A. I don't remember that any observation was made of that kind. I think that the more wine we gave him to make the less we would have to pay for it.

Q. 201. How came you to give him the sixteen hundred gallons and no more?

A. I think that he only had room for so much.

Q. 203. Only had capacity to cure that amount?

A. That he had a batch already, and he had so much more room.

Q. 204. Why did you think that if you gave him more wine he would cure it for a less price?

A. Because he could do it much cheaper. If we could have sold the wine right along we would have given him constant work.

319 Q. 205. Did you not inquire of him as to whether or not he could do it cheaper?

A. I did not; I was perfectly satisfied to pay him that price.

Q. 206. Sixteen hundred gallons was not a very large amount in your business, was it?

A. It was not.

Q. 207. If you were satisfied to pay him that price, did you undertake to get any more cured for that price?

A. After this we had these conversations with regard to making sherry together, and we never spoke of the price. We spoke of the sherry making in general terms—in relation to making it in large quantities.

Q. 208. You never suggested to him that you were willing to pay him seven and a half cents to continue to make sherry for you?

A. I have no doubt that I have.

Q. 209. Are you pretty sure that you did?

A. If I stated it to him I am pretty sure I meant it.

Q. 210. And he didn't accept it?

A. He made the arrangement with Mr. De Turk, and for that reason he didn't make any more for us.

Q. 211. Why were you willing to pay him seven and a half cents a gallon to cure this wine when by the process you had it only cost you two and a half to three cents?

320 A. We had less trouble with it. We were not fixed to make it, and from the sample which he showed me it was of a very excellent quality; I had great faith in it.

Q. 212. Was there any difference in its quality from that made by your process?

A. Yes; it was better than that made by our process, from the sample which he showed me.

Q. 213. But after that sample, did he ever have any wine that was as good as that sample?

A. Oh, yes; he did. He had very good wine after that.

Q. 214. The wine made by his process is superior, then, to your wine made by your process with burnt sugar?

A. I have never tested it after a year. The young wine that he made by that process didn't have much advantage over ours; but the wine which he gave me as a sample was certainly superior to the wine which we made. The sample was old; he had made it a much longer time before.

Q. 215. Now I will repeat the question. If you were willing to pay him seven and a half cents a gallon to cure wine, why were you willing to do so, when for two and a half cents or three cents
321 a gallon you could bring the wine to the same state as regards age?

A. I considered it a very fair wine, and we could use more of it. I could not make a large quantity of sherry except we fixed up different from how we were fixed up. Moreover, we were in a house at the time where the smoke injured everything in our establishment, and I did not want to annoy the party which rented from us by having so much smoke, and so forth, there. They were annoyed by

the burning of the sugar, and I wanted to avoid it; and Mr. Searle's sherry really turned out to be a very fair article, and we could use so much more, for we could put more in the market.

Q. 216. It was a good deal better than your sherry, was it not?

A. It was.

Q. 217. At the same age?

A. Not at the same age. It was pretty near the same at the same age, but it improved after a short time.

Q. 218. More than yours did?

A. Perhaps it did. I never had any of mine returned. He had some returned after it was shipped, and that was very good.

Q. 219. You cured your- in about ten days and by his process it took about four months. When that wine was cooled, after
322 going through his process, it was then in the same condition as regards age as yours was after the week or ten days, was it not—that is, it was made into sherry?

A. Yes, sir.

Q. 220. At that stage it was the best wine?

A. Mr. Searle's was better.

Q. 221. From that time on which wine would improve the faster—Mr. Searle's or yours?

A. It only was wine which Mr. Searle had shown me which he had shipped for an experiment, I presume, and it was returned to him and he had it back again. Our wine which we shipped we never had any samples returned. I don't know how our- turned out, but what we had in the cellar the wine was perfectly good.

Q. 222. You have been in the wine business a long time?

A. Yes, sir.

Q. 223. You knew that the process by which he cured wine was by heating?

A. Yes, sir.

Q. 224. It was not by the addition of flavoring extracts or other things?

A. No.

Q. 225. Don't you know which of those two wines would improve the faster or be the better at the end of five years—this wine which he cured or this wine which you cured by doctoring it?

323 A. If I had the wine before me I could say which was the best, but I have not tasted any of it.

Q. 226. Don't you consider yourself an expert in the handling of wines and as to their qualities?

A. I have got experience in the wine trade.

Q. 227. In your opinion, which of those wines would be better at the end of five years—your sherry or Mr. Searle's sherry cured by his process?

A. I can't tell which would be the best.

Q. 228. You are unable from your experience to form an opinion upon that question?

A. Yes, sir.

Q. 229. In other words, you could not form an opinion upon a

proposition of that kind unless you had the wine before you and could taste it?

A. Yes, sir.

Q. 230. This Searle sherry was then worth four to four and a half cents a gallon more to you than the wine you cured yourself. You were willing to pay that much more for it?

A. I was willing to pay that much more from the fact that we were in an establishment where we annoyed people by making smoke; in fact, their goods were damaged by the burning of the sugar.

Q. 231. Could you not have conducted your business outside of that building?

A. No; we could not very well; it was the only place which we had to do business in.

324 Q. 232. Could you not have secured another place as well as Mr. Searle could have some other place?

A. No, sir; we could not very well.

Q. 233. Was it necessary that this sugar should be burnt in this establishment?

A. It was necessary.

Q. 234. Could it not have been burnt in a candy establishment and brought there?

A. We did not wish to show other people our business.

Q. 235. You made all the sherry that you used for your own house in that way that you have described, did you?

A. Yes, sir; we did at that time.

Q. 236. And had since 1865?

A. Yes, sir.

Q. 237. And you continued to do it after Mr. Searle started his process, didn't you?

A. We made wine by this process afterwards.

Q. 238. You made all that your business required right along up to 1880?

A. Yes, sir.

Q. 239. What is the healthier of those two wines?

A. I think that both of them are equally healthy. There is nothing wrong in the process which I made sherry by.

325 Q. 240. I understood you to say that the fermentation of the wine works off the sugar in it?

A. Yes, sir.

Q. 241. And when that is gone you can drink the wine without having the headache?

A. I didn't relate to the sugar which is burnt.

Q. 242. But the natural sugar in the wine, you can work that out by fermentation?

A. Yes, sir.

Q. 243. From the sugar that you burnt, is that quality entirely burnt out which would produce headache?

A. I have no doubt, because the wine don't ferment then any more.

Q. 244. The wine that is doctored, then, is, in your opinion, just as healthy as the wine which is cured without any additions?

A. We never call this doctored. It is fully as good. I don't call it doctored.

Q. 245. Do you drink wine yourself?

A. I do.

Q. 246. Which would you prefer for a steady diet on your table—wine which had not any flavoring extract added to it, and had not any burnt sugar added to it, and which had not been mixed up with other wines—would you prefer that kind of wine, or would you prefer wine that had those things added to it?

326 A. I don't drink any other wine except plain wine which is fermented. I never drink any wine which has any addition of sugar or anything else; no artificial wine.

Q. 247. What is the flavoring extract used?

A. The flavoring extract is oil of almonds.

Q. 248. Is not that a composition?

A. Not that I know of. The oil of bitter almonds is poisonous, but it is used in such very small quantities that it is hardly perceptible in the smell in the bouquet. We do not use any bitter-almond oil. The oil of almonds which we use is not poisonous, I think.

Q. 249. Is that the only name that it has—oil of almonds?

A. I don't know it by any other name.

Q. 250. That is the only flavoring extract used, is it?

A. The only — which I have used.

Q. 251. Where was that oil of almonds which you used procured—where did you purchase it?

A. I don't know. There was a man used to come around; he manufactured it at the Presidio; quite an old gentleman; I don't remember his name. I used to buy an ounce or two ounces of it. We used but very little of it anyhow, very seldom.

327 Q. 252. Instead of oil of almonds, was it not a flavoring compound, and not oil of almonds alone?

A. No; I invariably bought it for oil of almonds.

Q. 253. Did you use to buy flavoring extracts from Herman and Company, on Sacramento street?

A. No; I don't remember that I did.

Q. 254. Have you got any of that compound around the place now?

A. No; this man used to make the different kind of flavors, and he came to my place and he made that for me especially. I told him that I wanted it for flavoring. He seemed to be a very good chemist, and he said he would make it for me. It was made of almonds.

Q. 255. Was it all almonds?

A. That is what he told me. He said it was the oil of almonds.

Q. 256. All you know is what he told you?

A. Of course.

Q. 257. Did you have any examination of it made yourself to find out whether you were using a poison?

A. No, sir; I didn't. I tasted the wine very often during the process of making it, and I never felt on my tongue the least inconvenience.

328 Q. 258. Can't you put a deadly poison in wine in such small quantities that it will not effect the person until afterwards?

A. I have no doubt that that can be done.

Q. 259. Do you know where that man is?

A. I do not know. The last time I was here I saw him. I have not been here much lately.

Q. 260. Do you know where we would be likely to find him?

A. I do not. If I should meet him in the street, and you would give me your address, I would send him to you.

Q. 261. Was he a soldier?

A. No; he was a chemist. He always told me that he lived at the Presidio.

Q. 262. Did you ever go out to his place?

A. No; he used to come in with a few little bottles.

Q. 263. And he told you that it was oil of almonds?

A. He did.

Q. 264. And you never had any examination made to see whether or not he told you the truth?

A. No, sir; I did not.

Q. 265. It accomplished the purpose for which you wanted it, and you were satisfied?

329 No answer.

Re-examination of BENJAMIN DREYFUS by Mr. FREIDENRICH:

Q. 1. What do you mean by an artificial wine?

A. Artificial wine is a wine made from other ingredients except grapes.

By the MASTER:

Q. 2. Would you include that sherry which you made under the head of artificial wines?

A. I do not.

By Mr. FREIDENRICH:

Q. 3. Do you know whether the wine from which the Searle sherry is made is fortified at all by adding alcohol to it?

A. Yes, sir; I think Mr. Searle's wine is fortified, too. I know our wine when I gave it to him I fortified before I gave it to him.

Q. 4. Are you sufficiently familiar with that process to be able to say whether the wine produced by that Searle process is or is not fortified while it is passing through the process before it is put into the tanks?

330 A. It is fortified by adding to it spirits of some sort or other.

Q. 5. The purpose being to bring it up to about seventeen or eighteen per cent.?

A. Just as people want it.

Q. 6. And in that respect there is no difference between the cold process which you have adopted and the Searle process, so far as fortifying is concerned?

A. No, sir.

Q. 7. When you speak of wine improving by age do you refer to the sherry which is made by either the Searle process or your process?

A. I mean all kinds of wine improve by age.

Q. 8. Do you regard the sherry produced by either process as a first-class wine?

A. No, sir; I do not.

Q. 9. A California sherry has a reputation of being very poor wine, has it not?

A. It is inferior to fine imported sherry.

Q. 10. And when you speak of wines in this country which were produced since 1880 being better and improving every year do you include in that category the sherry wine?

A. I do.

Q. 11. Do you include the wine produced by either the wine cured by Mr. Searle or by your process or by the estufa process?

331 A. By any process. I have never tasted sherry made in this country by any process that came up to sherry like Duff Gordon or Gonzales or Spanish sherries.

Q. 12. But, when you speak as to California wines improving for years, do you refer particularly to the best sherries?

A. No, sir; I speak of the improvements of all wines.

Q. 13. The improvement in the sherry would be due to the improvement in the wine itself before it went through the process of converting it into sherry?

A. Yes, sir.

Q. 14. And also the improvement in the grapes and the varieties of the grapes?

A. Yes, sir; for instance, formerly they didn't raise some of the grapes that are now raised which are claimed to be particularly adapted for making sherries.

Q. 15. The reputation which California wines now have is that owing to the improved sherry made or the other wines?

A. No; There has not been but a very small proportion of sherry in the market for the proportion of other wines which have been shipped.

Q. 16. Which of the California wines would rate best and which bear the poorest reputation in foreign markets, ordinarily?

332 A. Our white wines are poor and our clarets bear all a very fair reputation. There is not enough sherry in the market to say much about it.

Q. 17. In the course of your business, about how long would you keep the sherry on hand before you made sales of it?

A. I used to make sales of it after it was perfectly cleared, sometimes two or three weeks after it was made, and from that up to a year.

Mr. McKINNE:

Q. 18. You have said that sherry manufactured by this Searle process you thought would be better than yours when it came out of the process. What would be the comparison between the two when yours is four months old?

(Obj. Objected to by complainant as immaterial.)

A. I do not think there is much difference in them. Of course, I have not tasted Mr. Searle's until a few days after it was made, but I kept tasting mine whenever I could as it was being made. I remember now that Mr. Searle's wine came out of the process exhausted, but after a little while it commenced to improve.

Mr. FREIDENRICH:

Q. 19. I asked you how the sherry produced by your process compared with the sherry produced by the Searle process—
333 that is to say, taking your sherry after it is made a sherry and a sherry produced by the Searle process, after it is withdrawn from the tanks and cold, how this would compare with the other?

A. There is but very little difference.

Recross-examination of BENJAMIN DREYFUS by Mr. DICKINSON:

Q. 1. Sherry wine, then, is an exception as to the advantages which have accrued to wine generally in this State during the last few years; is that what you say, sherry wine is not sought for?

A. Oh, yes; there is a market for it, but there is not so much used as claret or hock or port.

Q. 2. Is sherry wine used as much in any country or under any circumstances as claret or hock?

A. I don't believe that it is. I have information that they use a great deal of sherry in England.

Q. 3. Has not the sale of sherry wine increased during the last few years as well as other wines?

A. I really do not know how the market here is in that respect. I remain in Anaheim most of the time.

Q. 4. Have you not sent larger quantities up of late years than formerly?

334 A. Yes; we send large quantities.

Q. 5. The trade has increased?

A. I think so.

Q. 6. When you speak of the Searle wine being exhausted do you mean when it is drawn from the tanks, or when the heat is taken away from it?

A. When it is drawn from the tanks. I was at Mr. Searle's when he got through making the sherry, and the only fault I found with it was that it came out in a very exhausted state, but I knew that it would recover its strength again.

Q. 7. Then it steadily improved right along?

A. I have no doubt that it does.

Q. 8. The wine made by your process was as strong when it came out as it was afterwards, was it not?

A. No; it was exhausted. After we get through refining the wine it is exhausted; it takes a few days to recover.

Q. 9. After the space of a few days in the case of your wine it might continue steadily to improve, might it?

A. Yes; it would improve.

Mr. FREIDENRICH:

Q. 10. Was there any difference between the two in that respect?

A. Both of the wines improved after.

335 By the MASTER:

Q. 11. What is the alcoholic strength of ordinary wine made from mission grapes?

A. I have never made any stronger than fifteen per cent. and from there it comes down to ten and a half or eleven; twelve per cent. is about a fair average.

Mr. DICKINSON:

Q. 12. This process that you use requires a man well versed in the mixing of wines to do it?

A. He must know what he is about.

Q. 13. An ordinary workman could not do it, could he?

A. No, sir.

(Recess until two o'clock p. m.)

336 THURSDAY, *November 15th*, 1883.

Present: Mr. Dickinson, solicitor for complainant; Mr. Freidenrich, solicitor, and Mr. McKinne, of counsel, for respondent.

Examination-in-Chief of Sophia Searle on Behalf of Respondent.

Mr. FREIDENRICH:

Q. 1. Are you the lady who has brought this suit, the complainant in this case?

A. Yes, sir.

Q. 2. Who has had the management of the estate of your deceased husband?

A. My lawyer and my son, James J. Searle.

Q. 3. Do you remember the time that the tanks which were in use on Jackson street by your husband were sold by order of the probate court?

A. It must be about four years ago—four years and a half.

337 Q. 4. Your son attended to that sale, did he, for you?

A. They were sold by the estate.

Q. 5. And your son attended to that matter for the estate?

A. Yes, sir.

Q. 6. Do you know that they were sold to Mr. De Turk?

A. Yes; I suppose —.

Q. 7. Do you know for what purpose they were sold to Mr. De Turk?

A. I do not.

Q. 8. You knew that Mr. De Turk was using them?

A. No. I don't know what became of them afterwards, only that they were sold by the estate.

Q. 9. You knew that they were sold to Mr. De Turk?

A. I didn't know exactly. I was informed by my son that they had been sold and they were credited to me.

Q. 10. Did he tell you to whom they were sold?

A. Yes, sir; to Mr. De Turk.

Q. 11. You are acquainted with Mr. De Turk, are you not?

A. Yes, sir.

Q. 12. You knew what his business was?

A. I knew that he was in the wine business.

Q. 13. You knew that these tanks were used for the purpose of making sherry, did you not?

338 A. My husband used them for that; yes.

Q. 14. And you knew also they had in them the coils and they could not be used for any other purpose than making sherry, did you not?

A. I don't understand machinery at all. I could not tell you.

Q. 15. You do not understand the machinery of making sherry, do you mean?

A. No.

Q. 16. But you knew that these tanks had been used by your husband for the purpose of making sherry?

A. Certainly; yes.

Q. 17. And didn't your son inform you for what purpose Mr. De Turk was intending to use them?

A. No, sir.

Q. 18. Did you not know what he was intending to do with them?

A. No, sir.

Q. 19. You knew, however, that he was in the wine business in Sonoma county?

A. Yes, sir.

Q. 20. Have you ever spoken to Mr. De Turk in relation to the sale?

A. No, sir; I have not seen Mr. De Turk since my husband died.

Q. 21. The transactions that the estate had with Mr. De

339 Turk were conducted altogether through your son?

A. Yes, sir.

Q. 22. And he was the business manager of the estate?

A. Yes, sir.

Q. 23. You are the executrix of your husband's estate?

A. Yes, sir.

Cross-examination of SOPHIA SEARLE by Mr. DICKINSON:

Q. 1. When you say that the estate sold these tanks to Mr. De Turk are you quite sure that the estate sold them directly to Mr. De Turk?

A. No; the estate did not.

Q. 2. Did you at any time authorize the sale of the patent of your husband for the process of making sherry, or any interest in the patent?

A. No, sir.

Q. 3. Are you aware of any interest in the patent having been sold or attempted to be sold?

A. Never.

340 Re-examination by Mr. FREIDENRICH:

Q. 1. You knew that these tanks had been used for the purpose of making sherry under your husband's patented process, and you also knew that he was making sherry for Mr. De Turk, did you not?

A. Yes, sir; he used to make it for Mr. De Turk and for other parties.

Q. 2. When you ascertained that Mr. De Turk had become the owner of the tanks and the owner of the plant, and that he was in the wine business, did you ever inquire what he was using the tanks for?

A. No; I never inquire anything about business.

Q. 3. Didn't that fact of itself lead you to believe that Mr. De Turk was making sherry by using the tanks, the coils, and so forth, which had been sold to him?

A. No; no idea of the kind has ever entered into my head.

Q. 4. What did you suppose he was doing with those tanks?

A. I didn't suppose anything at all, only that the tanks were sold. I didn't know for what purpose.

Q. 5. You never gave it a thought?

341 A. I never gave it a thought.

Q. 6. Never had any talk with your son about it?

A. No, sir.

Q. 7. And he never told you in any manner, way, or shape?

A. No, sir.

Q. 8. And you never gave it concern enough to inquire about it, did you?

A. No, sir.

Q. 9. Who informed you that Dreyfus and Company were infringing on that patent?

A. My son and my lawyer, I suppose.

Mr. FREIDENRICH: With reference to the particular verbiage in which the stipulation regarding the quantity of sherry cured by the defendants by the Searle process was expressed, I desire to limit the time within which the defendants cured said sherry, namely, as the testimony shows, to the year 1881 and up to the date of the expiration of the patent in 1882.

(Respondent rests.)

(Continued, by agreement, to Tuesday, 20th inst., at 2 o'clock p. m.)

TUESDAY, *November* 20*th*, 1883.

Further continued, by agreement of counsel, to Friday, 30th inst., at 11 o'clock a. m.

342 FRIDAY, *November* 30*th*, 1883.

Present: Mr. Dickinson, solicitor, and Mr. Boone, of counsel, for complainant; Mr. Freidenrich, solicitor, and Mr. McKinne, of counsel, for respondent.

Complainant rests.

EXHIBIT 1.

P. O. box 746. SAN FRANCISCO, *April* 10*th*, 1877.

Messrs. B. Dreyfus & Co., Dr., to John Searle.

Terms cash. Payable in U. S. gold coin. Greenwich dock warehouse.

For preparing 1,600 galls. of wine---------- 120 00

Rec'd payment, JOHN SEARLE.

(Endorsed:) Bill & receipt. John Searle. Ap'l 10th, 1877.

[Written across the face in red ink:] Searle *v.* Dreyfus. 2694. Respondents' Exhibit 1 (accounting). S. C. Houghton, master.

343 EXHIBIT 2.

B. Dreyfus & Co., California wines and brandies, Nos. 521 and 528 Market St.

No. 877 SAN FRANCISCO, *Ap'l* 16*th*, 1877.

The First National Gold Bank of San Francisco.

Pay to John Searle or order one hundred and twenty dollars, $120.00.

B. DREYFUS & CO.

[Stamp: First National Bank. Clearing House, April 11, 1872.]

Endorsed: John Searle.

[Stamp: 10. London & San Francisco Bank, Limited.]

(Endorsed:) Reference for accounting master's report. Filed March 18, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

[Written across the face in red ink:] Searle *v.* Dreyfus. 2694. Respondents' Exhibit 2 (accounting). S. C. Houghton, master.

344 *Exceptions.*

In the United States Circuit Court, 9th Circuit, District of California.

SOPHIA SEARLE, Executrix, etc., Complainant,
vs.
BENJAMIN DREYFUS *et als.*, Respondents.

Exceptions taken by the respondents to the report of S. C. Houghton, the standing master in chancery of this court, to whom this cause was referred by an order of this court made and entered on the 22nd day of May, 1883, directing him "to ascertain and take and state and report to this court an account of the number of gallons of wine made or manufactured or treated by complainant's patented process by the defendants or either of them, and also the profits, gains, and advantages which the said defendants or either of them have received or which have arisen or accrued to them or either of them since the 12th day of May, 1879, from infringing the exclusive right of the complainant by the treatment of wine by the said patented process."

345 First exception. For that such master has found and reported that the said complainant is entitled to have and recover of said respondents for his infringement of the letters patent sued upon and assessed the same 6.77 cents per gallon, amounting in the aggregate to $3,249.60; whereas the said master should have reported that said respondents had not received nor realized any gains, profits, or advantages whatever by the manufacture, use, or sale of complainant's said alleged patented process.

Second exception. The said master erred in taking as the basis for estimating any gains, profits, or advantages accruing to the respondents the contract made by complainant with Isaac De Turk, of Sept. 17th, 1877, for the said contract did not establish either a license fee or a royalty, nor did it tend to show what, if any, gains, profits, or advantages accrued to the respondents by the manufacture, use, or sale of said alleged patented invention.

Exception third. The evidence shows that at the time of the alleged infringements of complainant's said patent there were four different processes for making sherry out of white wine which
346 were open to the public and adequate to enable the respondents to obtain a result equally as beneficial as that obtained by the use of complainant's alleged invention, to wit, the Estufu process, the dry process, the *casa de sol* process, and the respondent's own process; and the said master erred in not making these processes or some one of them the basis of estimating the benefits, if any, the respondents derived from the use of complainant's said inventions.

Exception four. The said master erred in finding and reporting that the *casa del sol* process was not known and open to the public at the time of the alleged infringements.

Exception five. The master erred in finding and reporting that the process used by defendant as his own process was not adequate to produce equally as beneficial a result as the Searle process.

Exception six. The said master erred in finding and reporting that the gains, profits, and advantages which had accrued to the respondents since May the 12th, 1879, from infringing complainant's said letters patent was $3,249.60; and said master should have
347 found and reported that no gains, profits, or advantages had accrued to said respondents by reason of any such alleged infringements.

NAPTHALY, FREIDENRICH & ACKERMAN,
Solicitors for Respondents.

SCRIVNER & McKINNE, *Of Counsel.*

(Endorsed:) Exceptions to master's report. Service and receipt of a copy of within exceptions admitted this 19th day of April, 1884. Jno. L. Boone, solicitors for complainant. Filed April 19, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

348 *Exceptions of Complainant.*

In the United States Circuit Court, District of California, Ninth Circuit.

SOPHIA SEARLE, Executrix, &c., *vs.* BENJAMIN DREYFUS *et als.*

Exceptions taken by the said complainant to the report of S. C. Houghton, Esq., one of the masters of this honorable court, to whom this cause stands referred, bearing date the 17th day of March, A. D. 1884.

First exception. For that the said master has in and by his said report certified, in regard to the matter of evaporation, "that the testimony in this regard is not sufficiently full and explicit to annul the provision of the contract that De Turk was to deliver one hundred thousand gallons of white wine per year to Searle, who was to return an equal quantity of sherry after the treatment. As under this provision referred to Searle was to deliver to De Turk one
349 hundred thousand gallons per year of sherry, the loss by evaporation is charged in the account at the rate of fifty cents per gallon, which is the value of the raw wine, plus fifteen cents per gallon, the price to be paid for converting it into sherry:"

Whereas the said master ought to have certified that it is a well-established principle of law that a written contract cannot be varied by oral testimony; therefore the intention of the parties to the contract must govern when that intention can be definitely arrived at by the court; and, it appearing from the testimony and from the preceding portion of this report that it was the intention of the parties to said contract that the loss by evaporation should be borne by De Turk, and that the contract was actually carried out on that basis, the master is bound to accept that as the proper method of dealing with the evaporation, and nothing, therefore, should be deducted from the contract price on that account.

Second exception. Whereas said master has in and by his said report certified "that the profits, gains, and advantages which have

arisen and accrued to the respondents since the 12th day of
350 May, 1879, from infringing the exclusive right of complainant by the treatment of wine by the said patented process, amount to three thousand two hundred and forty-nine dollars and sixty cents:"

Whereas the said master ought to have certified that the profits, gains, and advantages which have arisen and accrued to the respondents since the 12th day of May, 1879, from infringing the exclusive right of complainant by the treatment of wine by the said patented process amounts to four thousand eight hundred dollars.

JNO. H. DICKINSON,
JNO. L. BOONE,
Solicitors for Complainant.

Endorsed: Exceptions of complainant to master's report on accounting. Service and receipt of a copy of within admitted this 21st day of April, 1884. Naphtaly, Freidenrich & Ackerman, Scribner & McKinne, att'ys for def'ts. Filed April 21, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

351 At a stated term, to wit, the July term, A. D. 1884, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room in the city and county of San Francisco on Monday, the 18th day of August, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable Lorenzo Sawyer, circuit judge.

Order of Court.

SOPHIA SEARLE, Executrix, *et al.*
vs.
BENJAMIN DREYFUS *et al.* } No. 2694.

This cause, heretofore argued and submitted to the court for consideration and decision upon the exceptions to the master's report herein, having been duly considered, it is ordered that said exceptions be, and the same hereby are, overrruled and said master's report confirmed.

It is further ordered that a decree be filed and entered herein accordingly.

352 I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the above-entitled cause.

Attest my hand and the seal of said circuit court this 22nd day of August, A. D. 1884.

[Seal of U. S. Circuit Court.]

L. S. B. SAWYER, *Clerk,*
By F. D. MONCTON,
Deputy Clerk.

[Endorsed:] Certified copy of order overruling exceptions to master's report.

353 *Enrollment.*

United States Circuit Court, District of California.

SOPHIA SEARLE, Executrix, etc., Complainant,
vs.
BENJAMIN DREYFUS *et al.*, Respondents. } No. 2694.

The complainant filed her bill of complaint herein on the 21st day of December, 1881, which is hereto annexed.

A subpœna to appear and answer in said cause was thereupon issued, returnable on the first Monday of February, A. D. 1882, which is hereto annexed.

The respondents appeared herein on the 6th day of February, 1882, by Freidernich & Ackerman, Esqs., their solicitors.

On the 20th day of April, 1882, an answer was filed herein, which is hereto annexed.

On the 1st day of May, 1882, a replication to said answer, was filed herein, which replication is hereto annexed.

On the 14th day of November, 1882, a stipulation in regard to amended answer, &c., was filed herein, which stipulation is hereto annexed.

354 On the same day, to wit, the 14th day of November, 1882, an amended answer was filed herein, which is hereto annexed.

On the 22d day of May, 1883, an interlocutory decree was filed and entered herein and the cause referred to S. C. Houghton, Esq., standing master in chancery, &c., to take, &c., an account, &c., which interlocutory decree is hereto annexed.

On the 18th day of March, 1884, said master filed his report herein, for which reference is hereby made to the files herein.

On the 19th day of April, 1884, exceptions taken by the respondents to said master's report were filed herein, which exceptions are hereto annexed.

On the 21st day of April, 1884, exceptions taken by complainant to said master's report were filed herein, which exceptions are hereto annexed.

On the 18th day of August, 1884, an order on said exceptions, &c., was made and entered herein, a certified copy of which order is hereto annexed.

Thereafter a final decree was filed and entered herein in the words and figures following, to wit:

355 *Final Decree.*

In the United States Circuit Court, District of California.

SOPHIA SEARLE, Executrix of the Estate of John Searle, Deceased, Complainant,
vs.
BENJAMIN DREYFUS *et als.*, Defendants. } No. 2694.

At a stated term of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room thereof in the city and county of San Francisco on Monday, the 18th day of August, A. D. 1884.

Present: The Honorable Lorenzo Sawyer, circuit judge.

This cause having been heretofore heard, and an interlocutory decree having been rendered and entered herein, wherein it was ordered, adjudged, and decreed, among other things, that it be referred to S. C. Houghton, the standing master of said court,
356 to ascertain and take and state and report to this court the profits, savings, and advantages which had arisen or accrued to the defendants since the 12th day of May, A. D. 1879, from infringing the said exclusive rights of said complainant by using the patented process described and referred to in the bill of complaint filed herein; also the damages which the complainant has sustained thereby;

And it appearing that the said master has complied with said order and decree, and has filed his report therein;

And it further appearing by and from said report that the savings, profits, and advantages which accrued to the said defendants by reason of said infringement upon complainant's patented rights amount to three thousand and forty-nine dollars and sixty cents:

Now, therefore, it is finally ordered, adjudged, and decreed, and the court does hereby finally order, adjudge, and decree, that the said complainant do have and recover from said defendants or either of them the said sum of $3,249.60, with interest from the 22nd day of May, A. D. 1883, and costs of suit, and, in default of the immediate payment thereof by said defendants, that the process of this court be issued to compel the payment thereof.

LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Final decree. Filed and entered August 22, 1884. L. S. B. Sawyer, clerk.

357 *Memorandum of Costs and Disbursements.*

Circuit Court of the United States, Ninth Circuit, District of California.

SOPHIA SEARLE, Executrix, &c., Plaintiff,
vs.
B. DREYFUS *et al.*, Defendants.

Disbursements:

Marshal's fees	$35 50
Clerk's fees	38 65
Witness' fees: Sanders, two days, 3.00; other witnesses, as per Ex. A & B, $23.25	26 25
Examiner's fees taking testimony	52 20
Attorney's fees examining 24 witnesses, as per Ex. A	60 00
Docket fee	20 00
Master's fees on accounting	390 00
Affidavit to complaint and this bill	1 00
Taxed at	623 60

L. S. B. SAWYER, *Clerk.*

UNITED STATES OF AMERICA.

DISTRICT OF CALIFORNIA, } ss:
City and County of San Francisco, }

John H. Dickinson, being duly sworn, deposes and says that he is solicitor for the complainant in the above-entitled cause, and as such is better informed relative to the above costs and disburse-
358 ments than the said complainant; that the items in the above memorandum are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

JOHN H. DICKINSON.

Subscribed and sworn to before me this 20th day of August, A. D. 1884.

[NOTARIAL SEAL.] GEO. T. KNOX,
Notary Public.

(Endorsed.)

To Messrs. Freidernich, Naphtaly & Ackerman, solicitors for the defendants:

You will please take notice that on Friday, the 22nd day of August, A. D. 1884, at the hour of 2 o'clock p. m., I will apply to the clerk of said court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said court in such case made and provided.

JOHN H. DICKINSON,
Attorney for Complainant.

Service of the within memorandum of costs and disbursements by copy acknowledged this 20th day of August, 1884.

NAPHTALY, FREIDERNICH & ACKERMAN,
Solicitors for Defendants.

359 Ex. A.

Names of Witnesses Examined.	Fees Paid to Witnesses.	
(1) James J. Searle, for com.	To Jas. J. Searle	1 50
(2) J. De Turk	To J. De Turk	1 50
(3) J. Frowenfeld.		
(4) Henry Saunders (compl't).		
(5) W. L. Daniel.		
(6) H. Sanders (resp't).		
(7) J. Weiland.		
(8) H. Arens.		
(9) H. Vrooman.		
(10) Jas. H. Searle (resp.).		
(11) Ja. M. Curtis (comp.).		
(12) J. M. Curtis (resp.).		

Accounting.		
(13) J. Frowenfeld.		
(14) F. Pohndorff	(F. Pohndorff, 70 miles, Napa	
(15) H. Sanders.	City and return, $8.00, in-	
(16) F. Michel.	cluding mileage)	8 00
(17) C. Allenburg.		
(18) J. De Turk	J. De Turk	1 50
(19) J. J. Searle.		
(20) J. Scott.		
(21) John Searle.	(John Searle, San Juan South	
(22) C. Kohler.	& return, $10.75, including	
(23) J. M. Curtis.	100 miles mileage)	10 75
(24) B. Dreyfus.		
		$23 75

360 (Endorsed:) Memorandum of costs and disbursements. Filed this 20th day of August, A. D. 1884. L. S. B. Sawyer, clerk.

361 *Certificate to Enrolled Papers.*

Whereupon said pleadings, subpœna, stipulation, master's report, exception to master's report, certified copy order, interlocutory and final decrees, and memorandum of taxed costs are hereto annexed, said final decree being duly signed, filed, and enrolled pursuant to the practice of said circuit court.

Attest, &c.

[Seal Circuit Court.]

L. S. B. SAWYER, *Clerk*,
By F. D. MONCTON,
Deputy Clerk.

(Endorsed:) "Enrolled papers." Filed August 22, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

362 *Caption to Depositions.*

In the Circuit Court of the United States, Ninth Circuit, District of California. In Chancery.

SOPHIA SEARLE, Executrix, &c., *v.* BENJAMIN DREYFUS *et al.* } 2694.

Be it remembered that on the several days hereinafter set forth, at my office, in the city and county of San Francisco, State of California, before me, Joseph F. O'Beirne, an examiner in chancery of this court, personally appeared the several witnesses hereinafter named on behalf of the respective parties to the above-entitled action.

J. H. Dickinson, Esquire, solicitor, and J. L. Boone, Esquire, of counsel, appeared on behalf of the complainant and David Freidenrich, Esquire, solicitor, and J. J. Scrivner, Esquire, of counsel, appeared on behalf of respondents.

Following is a record of the proceedings:

TUESDAY, *September* 5, 1882.

Present: Mr. Dickinson, solicitor for complainant; Mr. Freidenrich, solicitor for respondent.

363 *Stip'n.*

For the purposes of this trial it is stipulated—

1. That the John Searle named in the bill of complaint died on the 12th day of May, 1879, at the city and county of San Francisco, California, leaving a last will and testament, by which will he devised and bequeathed all his property and estate, both real and personal, to Sophia Searle, the complainant herein, and by said will appointed her sole executrix thereof.

2. That on the 4th day of June, 1879, said will was duly admitted to probate in and by the probate court of the said city, county, and State, a court having jurisdiction thereof, and on said last day letters testamentary, with the will annexed in due form, were issued by said court to said Sophia Searle, who was on said last day duly appointed by said court executrix of the -state of said John Searle, deceased; and said Sophia Searle, on said last day, duly qualified as such executrix, and ever since then has been and now is the duly appointed, qualified, and acting executrix of the estate of said John Searle, deceased.

364 3. That Benjamin Dreyfus, Emanuel Goldstein, Jacob Frowenfelt, and John F. Weglein are, and ever since the 1st day of January, 1879,—, copartners and doing business at said city and county of San Francisco under the firm name and style of B. Dreyfus & Co., and are the respondents herein.

Deposition of James J. Searle.

Examination-in-chief of JAMES J. SEARLE on behalf of complainant by Mr. DICKINSON:

Q. 1. Where do you reside, Mr. Searle?

A. 1218 McAllister street, in this city.

Q. 2. What relation were you to John Searle, deceased?

A. Son.

Q. 3. Is Sophia Searle, the executrix, complainant in this suit, your mother?

A. Yes, sir.

Q. 4. Who has attended to all the estate on behalf of your mother?

A. Do you mean who has managed the business?

Q. 5. Yes.

A. I have.

365 Q. 6. Are you acquainted with all the affairs of the estate?

A. Yes, sir.

Q. 7. And its property?

A. Yes, sir.

Q. 8. Do you know the patent in suit here?

A. I know the substance of it. I have read it over a number of times.

Q. 9. To whom does that patent belong?

A. It belonged to my father, and now belongs to the estate.

Q. 10. There has been no distribution of the estate or sale of this patent by which it has passed out of the possession of your mother, the executrix?

A. There has not.

Q. 11. And the estate is now in process of settlement?

A. Yes, sir.

Q. 12. You are acquainted with the nature of the suit, are you?

A. Yes, sir.

Q. 13. Is this paper now shown you the patent which it is alleged here has been infringed?

A. This is the one.

Complainant puts in evidence the letters patent referred to
366 being original letters patent of the United States, number 48728, granted July 11th, 1865, to John Searle, of San Francisco, for "improved process of imparting age to wine."

Ex. A. Marked Complainant's Exhibit "A."

Stipu. It is agreed between counsel that a Patent Office copy of the specifications and claims in the said Exhibit "A" may be substituted in place of the original and the said original withdrawn.

Q. 14. Mr. Searle, during your father's lifetime what, if anything, did he do under and in pursuance of these letters patent?

A. He made sherry at various times by the process described in the letters patent.

Q. 15. Where?

A. On Eighth street, between Folsom and Howard, was the first place. The next was at 1218 McAllister, and finally at 434 Jackson street, all in this city. He did make some previously, but it was down town somewhere on a very small scale. He made a few hundred gallons downtown somewhere, but I could not tell the place. It was when I was a youngster.

367 Q. 16. Just state what he did at 434 Jackson street, for instance.

A. He had wines shipped him by I. De Turk.

Q. 17. Taking the wine, what did he do with it?

A. He had it placed in tanks holding from one to eight thousand gallons each. They were furnished with a pipe passing in very near the bottom—passing almost through the tanks. This pipe was about three inches in diameter; connecting with this at the further end was a smaller upright pipe, say about an inch in diameter, which came up through the top of the tank. This was an exhaust pipe. Steam was generated from below by means of a boiler and passed into the tank, heating the wine and cooling the steam as it went through. The steam was applied without pressure or with a very slight pressure.

Q. 18. You are not a draftsman, particularly, are you?

A. No.

Q. 19. Have you made any drawing to illustrate in what manner this pipe entered the tank?

368 A. I had made the drawing which I now hold in my hand for that purpose. I made the rough draft, and had my brother make the clean draft of it. This is my brother's drawing and my writing.

Q. 20. What does that show?

A. These shows the manner in which the steam is introduced into the pipes into the tank.

Q. 21. It shows a tank——

A. It shows a tank marked AA. There is a man-hole by which a person may enter the tank, at the top B. Then C is the main steam-pipe connecting with the boiler. D is a stop-cock by which the steam can be either entirely shut off or regulated or turned on. EE is the steam-pipe in the tank. That is all a continuation of the pipe in the tank C. This pipe connects below with the boiler. F is the exhaust or out-pip- which comes out at G. It extends a little above the tank. That is the whole apparatus.

Q. 22. What do you say the object is of passing that pipe in there?

A. To heat the wine.

369 Q. 23. Steam is introduced into this pipe?

A. Into the pipe.

Ex. B. The diagram of Searle apparatus above referred to is put in evidence by complainant and marked Exhibit B.

Q. 24. How long did your father operate these works on Jackson street, up to what time?

A. Up to the time of his death. It was about a year and eight months, I think, that he had it in operation; about that time. I am not positive exactly.

Q. 25. The- were in operation at the time of his death?

A. They were in operation at the time of his death.

Q. 26. Subsequent to that time who superintended the works, if anybody?

A. I did.

Q. 27. What did you do about it?

A. Subsequent to his death I superintended for the estate—superintended them for my mother.

Q. 28. You attended to the whole matter, did you, after his death?

A. I attended to the whole matter after his death.

370 Q. 29. Turned out a quantity of wine that was in process of manufacture at the time of your father's death?

A. Turned out a quantity of wine that was in process of manufacture, and received some little wine afterwards which was put through the process and delivered.

Q. 30. Prior to his death were you engaged about the factory or the wine?

A. No, sir; not engaged on salary. I used to attend to it occasionally for him.

Q. 31. You were familiar with the operation?

A. I was entirely familiar with the operation.

Q. 32. What was the effect upon the wine that had the steam introduced into it in the way you have described?

Obj. Objected to by the respondent on the ground that the witness has shown by his own testimony that he is not an expert.

A. It was put in as raw wine—raw, new wine—and when drawn off it was sherry, after going through the full process, remain-
371 ing in the tanks from two to four months—that is, that was the case with the white wine put in.

Q. 33. Was there any other except sherry wine that your father, during his lifetime, attempted to cure?

A. Yes, sir; claret.

Q. 34. Do you know the defendants in this case—the members of the firm of B. Dreyfus & Co.?

A. I know Mr. Goldstein and Mr. Frowenfeld.

Q. 35. Where were they engaged in business?

A. I think it is Bryant street, between Fifth and Sixth; I am not positive, but I think that is the location; it is the "Eagle Wine Vaults."

Q. 36. Do you know of any place where they have an establishment for ga*gu*ing liquors or wines?

A. Yes, sir.

Q. 37. Where?

A. At this place, the Eagle Wine Vaults.

Q. 38. Have you ever been there?

A. Yes, sir.

Q. 39. What member or members of the firm did you see
372 when you went there?

A. I saw Mr. Frowenfeld.

Q. 40. What did you go there for?

A. I went there for the purpose of making a demand on the firm to make some arrangement by which they could use this patent, knowing that they were using it already.

Obj. Mr. FREIDENRICH: I move to strike out the last portion of the answer of the witness, wherein he says, "Knowing that they were using it already," as not responsive to any question put to him and entirely voluntary on the part of the witness.

By Mr. DICKINSON:

Q. 41. At what time was this?

A. It was immediately before this suit was brought. If you can tell me when the suit was brought I can tell you about the time. I think it was in October or November, 1881, that I called on them.

Q. 42. It was prior to the commencement of the suit?

A. Yes; a few months previous.

Q. 43. Along about October?

A. Somewhere about there—the exact month I don't know.
373 Q. 44. You saw Mr. Frowenfeld?

A. I saw Mr. Frowenfeld and one of the clerks and Mr. Goldstein.

Q. 45. You went there, you say, to make a demand on them in regard to this patent?

A. Yes, sir.

Q. 46. What did Mr. Frowenfeld tell you?

A. He told me that he couldn't do anything about it; if I wanted to see whether there was any infringement or no I was at liberty to go in and look at the tank.

Q. 47. Did you go in?

A. I went in.

Q. 48. And looked at the tanks?

A. And looked at the tanks.

Q. 49. Describe the tanks thay you saw.

A. I saw a tank, the approximate drawing of which I have here, which consisted of essentially the same tank as that I have described as being used by us, a little smaller, however. The difference was, however, that the steam-pipe had a different stop-cock on it; that is, it had a regular faucet instead of simply an ordinary stop-
374 cock as we had in ours, and the exhaust pipe, instead of coming up through the top of the tank, came back almost alongside of the supply pipe of steam. I have drawn the worm inside of this. Of course, I didn't see the worm that time, the tanks being full of wine. I was told by one of the employees——

Obj. Mr. FREIDENRICH (interrupting): We object to what one of the men told him, and move to strike it out.

The WITNESS (continuing): That it was there.

By Mr. DICKINSON:

Q. 50. By whom were you told this?

A. I think it was the foreman. It was one of the employés of the works, who was sent to show us the works.

Q. 51. You were sent in by Mr. Frowenfeld?

A. By Mr. Frowenfeld himself and Mr. Cochran.

Q. 52. Did you ever afterward see the worm?

A. No; I saw it previously.

Q. 53. You had seen it before?

A. Yes, sir.

Q. 54. Where?

A. At Sanders & Co.'s., on Mission street.

375 Q. 55. Is the drawing which you have last referred to a drawing of the worm which you were informed was in the tank of the defendants?

Obj. Objected — as leading, and also as calling for hearsay testimony.

A. Yes; the approximate drawing. I am not sure that it had the number of tons I give it in the drawing, whether more or less; I think it had one less turn. That would be the only difference.

Q. 56. By whom was this drawing that you have last referred to made?

A. The tank itself was done by my brother after a rough drawing by me. The writing and lettering is mine. This was drawn from the one I made. I gave him my drawing and he drew this right from it.

Q. 57. Under your supervision?

A. Under my supervision.

Q. 58. Who drew this representation of the pipe or worm inside of the tank?

A. He did.

Q. 59. From what?

A. From my drawing of it.

376 Ex. C. Mr. Searle's drawing of respondents' tank above referred to is put in evidence by complainant and marked Exhibit C.

Obj. Objected to by respondent- on the ground that it was not made by the witness, and that he has no knowledge that it is a representation of the pipe or tank as used by the respondents.

Cross-examination of JAMES J. SEARLE by Mr. FREIDENRICH:

Q. 1. How old are you?

A. Twenty-seven, passed.

Q. 2. How old were you when your father began manufacturing by this process on Eighth street?

A. About twelve years old—about; I don't know positively my exact age.

Q. 3. Have you a distinct recollection?

A. Of the use of the process on Eighth street? No. In this way I have: I know what the appearance of the tanks was, the way the steam was admitted into them, and so on, but further than that I paid no attention to it; took no interest in it.

377 Q. 4. When did your father move to 1218 McAllister street?

A. I think in '67; '67 or '68.

Q. 5. When did he move to 434 Jackson street?

A. About 1877.

Q. 6. Was he in business alone during all these years?

A. In that business—the wine business—he was in business alone. He had other business, however.

Q. 7. What other business did he have?

A. Warehouse.

Q. 8. What kind of a warehouse?

A. Bounded and free warehouse.

Q. 9. Was he engaged in any other occupation during those years while he was engaged in the manufacture of wine by this process?

A. He was engaged in shipping wine also; yes, of my own knowledge, I know that he was engaged in shipping wine also.

Q. 10. Then this business of manufacturing wine by this process was not his only business, was it?

A. It was not his only business.

Q. 11. Was it his main business?

378 A. It was his main business; by that I mean he made more profit by the wine than by the other.

Q. 12. I didn't ask you what the result of his business was.

A. You wish to know to what business he paid the most attention?

Q. 13. Yes.

A. To this business of aging wines.

Q. 14. Had he a partner in that business?

A. He was engaged in manufacturing for I. De Turk under contract, but he was not in partnership with anybody.

Q. 15. Was he engaged in manufacturing for any one else?

A. Not at that time.

Q. 16. During any of these years was he manufacturing for any one else?

A. Yes; during previous years, while he was on McAllister street, he manufactured for B. Dreyfus & Co., and some for J. N. Curtis; at least the wine was furnished by J. N. Curtis.

Q. 17. After he moved on Jackson street did he manufacture for any one else besides Mr. De Turk?

A. No.

379 Q. 18. Did he put up these tanks originally at 434 Jackson street?

A. Yes; he put them up himself.

Q. 19. Was he the owner of the tanks?

A. He was the owner of the tanks.

Q. 20. And he continued there until——

A. Until the time of his death.

Q. 21. And was the business continued after his death?

A. I continued it for a short time.

Q. 22. How long?

A. About six months; a little over six months.

Q. 23. And he died when?

A. He died on the 12th of May, 1879.

Q. 24. And you continued it until what time?

A. Until somewhere in, I think it was, March, 1880. Then the tanks were taken down and stored.

Q. 25. Was it six or twelve months that you continued to manufacture by this process after the death of your father?

A. It was more than six—less than twelve.

Q. 26. Can you fix the time when the tanks were taken down?

A. I think it was towards the end of March, 1880.

380 Q. 27. Can you tell the last time that you heated or aged wine by this process after your father died?

A. Yes.

Q. 28. When was it?

A. It was about October I received the wines, and I delivered them in February and March.

Q. 29. From whom did you receive*d* them?

A. I received them from Mr. De Turk and delivered them to Lochman & Jacobi.

Q. 30. Were any wines in process of being manufactured by this process at the time your father died?

A. Yes, sir.

Q. 31. Then, after that, you took another lot of wine, did you?

A. After that we received some to fill up the tanks that were partly filled and put it through the process.

Q. 32. And since March, 1880, has this process been used by you?

A. No.

Q. 33. Has it been used by any other person?

A. Yes.

Q. 34. With your knowledge and conse-t?

381 A. One with my knowledge and conse-t; one without; that I know of.

Q. 35. Have you granted any license to any one to use it since you quit using it.

A. To one.

Q. 36. To whom was that?

A. I. De Turk.

Q. 37. He is using it now by your consent, is he?

A. He is using it now.

Q. 38. Do you know whether it was used by any other person in this city by the consent of yourself or your mother?

A. It was not used by my consent.

Q. 39. And was it by the consent of your mother?

A. I could not say that; I don't know what my mother has done.

Q. 40. Do you know whether it was used by any other person during your father's lifetime with your father's consent?

A. I don't know anything about it.

Q. 41. Have you sold to Mr. De Turk the right to use this process?

A. I sold the tanks to him and the right to use it—or, rather, I sold the tanks to him and he used the process.

382 Q. 42. Did you ever sell to him the right to use the process?

A. I didn't sell to him the right to use the process, but I hav'n't interfered with him in using it. There was no written agreement; there was a verbal agreement between us that if he bought the tanks I shouldn't interfere with his use of the process.

Q. 43. Have you ever applied it in any different way than as indicated by the drawing that you have produced here?

A. I don't quite understand the question.

Q. 44. Have you ever applied the heat or introduced it into the tanks in any different way than you have shown here by the drawing Exhibit "B?"

A. Do you mean by that for any different purpose or in a different manner?

Q. 45. In a different manner.

A. Substantially in the same manner in every case.

Q. 46. Into how many tanks was it introduced by you?

383 A. By me? I simply took the tanks as they were; I never set up any tanks.

Q. 47. In how many tanks did you see the pipes introduced after your father's death?

A. I saw them in six at 434 Jackson street, and one more—seven; one small cask that was used for claret, and in six at the Eagle wine vaults. The small cask was an experimental cask. The way it was introduced into that I don't know. I saw the tank set up; I never examined how the piping was arranged in it.

Q. 48. Then in all the tanks which your father used in his lifetime the heat was introduced into the tanks in the manner which you have indicated in the drawing you have presented here, Exhibit "B?"

A. Yes; substantially in that manner, except, as I say, the seventh small cask.

Q. 49. That is, it was introduced near the base of the tank, extending over to about the other end, inside the tank?

A. Almost to the end; yes.

384 Q. 50. And there is a perpendicular pipe coming out through the top of the tank?

A. Yes; they were all that way, with the exception of this single tank, of, say, one hundred and sixty gallons, into which the steam was introduced, but the interior arrangements of which I don't know anything about; all the time I was there I never saw it; it was full of wine.

Q. 51. What do you mean by saying that that was an exception?

A. I don't say that that was an exception; I say I don't know how that small tank was.

Q. 52. I ask you how the pipes were introduced into the tanks, if you know; if you don't know, say so.

A. I know about that; yes.

Q. 53. Then, in all the tanks that your father used in his lifetime, you know that these pipes were introduced in the manner you have indicated in the drawing Exhibit "B?"

A. Yes, sir.

385 Q. 54. That is, there was one horizontal pipe running into the tank, connecting with the perpendicular pipe extending through the top of the tank?

A. Yes; that is the way they were arranged.

Q. 55. And just before the pipe entered the tank there was a stop-cock whereby the steam could be drawn off?

A. Yes, sir.

Q. 56. Do you know what the claim of your father was—whether he claimed the exclusive right of introducing heat into the tanks by means of steam?

Obj. Objected to by complainant as incompetent.

A. He didn't claim the right of simply introducing heat into the tanks by means of steam; he claimed the right of aging wines by doing that.

Q. 57. Is heat introduced into those pipes for any other reason that you know of?

A. Of course all I know of this is by reading and conversation; I don't know of my own knowledge; I will answer that question, if you wish me to, in that way.

Q. 58. Will you tell us what it is that, as the representative of your father's estate, you claim the exclusive right to, as represented by the drawing Exhibit "B?"

A. We claim the exclusive right of aging wine by applying heat within the tanks containing the wines by means of heat passing through pipes, chambers, or other means, either by day heat or steam, and aging wines in that manner.

Q. 59. And it does not make any difference whether steam is used or not?

A. It may be by steam or it may be by any other heat. So long as the heat is introduced into the tank containing the wine it don't make any difference.

Q. 60. Then the process that you claim the right to is the introduction of the pipes into the tanks?

A. Into the wine itself, into the tanks, and so heating the wine on the inside.

Q. 61. It makes no difference whether the heat is produced by steam or air or any other way?

A. It makes no difference what kind of heat it is.

Q. 62. That is what you understand your rights to be under the letters patent?

A. Yes.

Q. 63. And it is solely for the purpose of aging wines and nothing else?

Obj. Objected to by the complainant on the ground that the patent is the best evidence and speaks for itself.

A. That is what we claim for aging the wines.

Q. If it is introduced for any other purpose than that then your testimony in regard to defendants' infringing would be a mistake, would it not?

Obj. Objected to by complainant as incompetent, irrelevant, and immaterial.

A. That is a pretty hard question to answer. I don't understand how you mean it.

Q. 65. (Q. 64 repeated.)

A. I can't say as to that. There might be some cases in which it was introduced for some other purpose where it might infringe.

Q. 66. At the time you had your interview with Mr. Frowenfeld in October, 1881, did he admit at that time that he was infringing your patent?

A. He had very little conversation with me. He told me he was not going to say anything about it, or words to that effect; if I wished to look at the tanks I was welcome to do so. He gave me no satisfaction one way or the other—admitted nothing and denied nothing.

Q. 67. You went there for the purpose of demanding that he make some arrangement with you regarding that patent?

A. Yes, sir.

Q. 68. You claimed at that time that he was infringing?

A. Yes, sir.

Q. 69. And do you mean to say that he admitted it?

A. I don't mean to say that he admitted or denied any-
389 thing. He neither admitted nor denied.

Re-examination of JAMES J. SEARLE by Mr. DICKINSON:

Q. 1. You say that the process described in the patent, Exhibit A, might be used for any purpose. Did you ever hear of this method of introducing heat into wines for the purpose of ageing wines or liquors prior to the issuing of this patent?

A. No.

Q. 2. Did Mr. Frowenfeld deny that they were infringing the patent when you called there?

A. No; he did not deny it.

Q. 3. Did you state to him that they were infringing the patent?

A. Yes.

Q. 4. And he did not denny it.

A. He did not deny it and did not admit it.

Q. 5. Did he say anything about it?

A. He said, in effect, that he had nothing to say about it and I could go and look.

390 *Deposition of I. De Turk.*

Examination-in-chief of I. DE TURK on behalf of complainant by Mr. DICKINSON:

Q. 1. Where do you reside?

A. Santa Rosa.

Q. 2. What is your business?

A. I am — vintner and wine maker.

Q. 3. How long have you been engaged in the business of wine producing and manufacturing?

A. About twenty years.

Q. 4. At the place where you now live?

A. Near the place where I now live.

Q. 5. For the past twenty years?

A. Yes, sir.

Q. 6. During these twenty years in that business to what extent have you had to do with the handling of wine?

A. I handled wines from the beginning. I started with only a small lot of wine, only a few pipes, and my business has increased up to about three hundred thousand gallons a year. For the last few years it has run to about three hundred thousand gallons.

391 Q. 7. What wines have you been handling during that time?

A. I have made what we call clarets, white wine or hocks, and sherry and brandy.

Q. 8. How long since you have been making sherry?

A. I have been making sherry since my contract commenced with Mr. Searle, in 1877, I think, as well as I can remember.

Q. 9. You were acquainted with Mr. John Searle in his lifetime?

A. Yes, sir; I was.

Q. 10. How was the wine or sherry that you speak of made under the contract of 1877?

A. It was made by a patent process of Mr. Searle's.

Q. 11. Are you familiar with that process?

A. I am; yes.

Q. 12. Did you acquaint yourself with the process by which he made sherry?

A. Yes. I have, since that time.

Q. 13. Have you examined the specifications of the letters patent, Exhibit A, here?

392 A. I have. I have examined them since I have been setting here in this office.

Q. 14. Is this the process described in his letters patent?

A. That is the process; yes, sir.

Q. 15. What is the prime thing in this process?

A. It is to heat the wine from pipes into the tank that contained the wine.

Q. 16. When did you first learn of this process?

A. I first learned of it, I think, in 1877.

Q. 17. From whom?

A. My first knowledge of it was from Mr. J. M. Curtis. He spoke to me about Mr. Searle's process.

Obj. Mr. FREIDENRICH: We object to what Mr. Curtis said.

By Mr. DICKINSON:

Q. 18. Where did you first hear of this process in operation—know of it?

A. At Mr. Searle's residence, which was on McAllister street, I think, at the time.

Q. 19. Are you acquainted with the defendants in this case, B. Dreyfus & Co.?

A. I am.

393 Q. 20. Did you meet any — them at Mr. Searle's residence?

A. No, sir.

Q. 21. In company with Mr. Searle did you ever meet any of them?

A. Not at his residence. I did in his place of business on Jackson street, and also in Mr. B. Dreyfus's place of business on Market street.

Q. 22. Did you have any conversation there with regard to this patent—this process?

A. Yes, sir; we had talk about it.

Q. 23. What was the conversation between Mr. Dreyfus, Mr. Searle, and yourself?

A. Mr. Searle invited me to Mr. Dreyfus's place.

Q. 24. That was Mr. John Searle, the patentee, deceased?

A. Yes. He invited me to Mr. Dreyfus's place to see some wines that he had perfected or treated for Mr. Dreyfus. We saw the wines and talked about it.

Q. 25. That was before you had made your contract with Mr. Searle?

A. I am not certain about that, whether it was before or after.

Q. 26. Was it there stated as to how this wine had been treated?

394 A. Yes; in a general way it was stated what his process was; no minute description given.

Q. 27. Of what advantage, if any, is this process over any process in use at the time of the issuance of this patent?

A. The advantage that I see in the process is that the shrinkage is a good deal less by the Searle process than by the other, and the result is about the same. The shrinkage is from fifteen to twenty per cent. less.

Q. 28. What do you mean by shrinkage?

A. The loss in the manufacture of plain wines into sherry.

Q. 29. That is the direct effect of the Searle process upon the wine, you say?

A. Yes, sir.

Q. 30. How is it with regard to the saving of time or fuel?

A. I think the Searle process is more economical than the dryer process or furnace process. I don't know exactly how to designate that. There is different ways of making sherry. One is the

395 Searle process and the other furnace heat. This Searle process is the most economical.

Q. 31. How is the *heat* applied by the furnace process?

A. Taking a large room and setting casks—common wine pipes—that will hold from 140 to 150 gallons, and a furnace is constructed around the entire room, a fire built in this furnace, and the heat radiates through the room and heats the wine up; heats the wine from the outside of the cask; heats the atmosphere of the room which heats the wine.

Q. 32. You speak of casks holding from 100 to 140 gallons. Is there any advantage in having large casks?

A. I speak of casks of that capacity from the facts that I have seen those used. I haven't seen any larger used. I see nothing to prevent them from using large casks in that process.

Q. 33. How is the Searle process in regard to the size of their tanks?

A. I don't think it makes any difference whatever. Of course larger tanks are more economical and easier to work than small ones.

396 Q. 34. How, in regard to the preparation of the room for the reception of the tanks under the Searle process and under the other?

A. There is no significance in that so it is a tight room.

Q. 35. By the dryer process you give the tank containing the wine a sort of Hamham bath, do you?

A. No; I can't say that. It is a sort of a dry-air bath, I should think.

Q. 36. The tank just sits up in a room and the room has to be constructed so as to retain the heat, of course?

A. Yes. It is necessary to have a close room for the dryer process.

Q. 37. Is that necessary in the Searle process?

A. No.

Q. 38. How is it with regard to the effect upon the casks themselves that are in use?

A. The dry-air process is very injurious to cooperage, and often the cooperage is destroyed in one single process of manufact-
397 uring one lot of sherry, or damaged so much that it is almost useless.

Q. 39. How about the Searle process?

A. It don't affect the cooperage materially.

Q. 40. How, with regard to taste, the effect upon the taste, of the liquors?

A. I can't see but very little difference. One process brings about the same effect that the other does, as I understand it.

Q. 41. How, with regard to the tanks used in the two different processes? You say it could have no difference in the effect upon the taste?

A. The result is the same, except that I claim that the Searle process is much more economical than the other process.

Q. 42. Did you ever heard of any other process of curing wine by the application of heat into or to it?

A. Yes, sir.

Q. 43. What other process?

A. The Pasteur process of treating wines.

398 Q. 44. What is the Pasteur process?

A. It is described. Where wine is bottled the wine is immersed in hot water, and in casks it is also immersed in a hot-water bath to raise the temperature to a certain degree, and it will preserve the wine, and if there is any deluterious substance in it it will precipitate it.

Q. 45. What do you say it is used for? Is that process used for ageing liquor?

A. I don't think it is. I don't think it is claimed particularly to age liquors; it is claimed to improve liquor.

Q. 46. What effect is it claimed to have on the fermentation of liquors?

A. It is claimed to kill the germs of fermentation and to affect the wine by precipitation.

Q. 47. Is its effect upon fermentation the prime use of the Pasteur process?

A. There is so many things claimed for it that I cannot say whether that is the primary object claimed for it or not.

399 Q. 48. Do you know of any process of application of artificial heat for the ageing of wines?

A. I know something of the same nature as the Pasteur process, another machine that Mr. Curtis has for sale, and that is aimed to arrive at the same results as the Pasteur process.

Q. 49. Do you know of any process by which heat is applied by means of pipes within the casks, except the Searle process?

A. I do not.

Q. 50. Did you ever hear of such a process?

A. I have never heard of such a process being used in wines; I have heard of the process being used in must.

Q. 51. What is must?

A. That is sweet wine before it is fermented—the unfermented juice of the grape.

Q. 52. For what is it, then, used?

A. It is used for extracting the color from the skin of the grapes. After grapes are crushed it is must. It is not wine until it
400 has fermented. Must is the common term used for it before it ferments

Q. 53. And you introduced heat into the casks in this process that you speak of for the purpose of extracting the color?

A. For the purpose of extracting the color and resisting fermentation.

Q. 54. Is this cask tightly closed?

A. No; they generally use an open tank.

Q. 55. How in the Searle process, while the wine is under treatment?

A. That is a closed tank.

Q. 56. You have purchased the tanks from Mrs. Searle, haven't you?

A. Yes, sir.

Q. 57. You now own the tanks that were used by John Searle?

A. Yes, sir.

Q. 58. You are using the Searle process?

A. I am.

Q. 59. How long have you been using the process?

A. A little over a year.

Q. 60. So you are familiar with it?

A. I am familiar with the process, yes, sir.

401 Q. 61. Through what length of time did your contract with Mr. Searle extent?

A. For two years.

Q. 62. At the time of his death a portion of the contract was uncompleted, was it?

A. Yes, sir.

Q. 63. You have read the specifications of this patent, Exhibit A?

A. Yes, sir.

Q. 64. Can you take those specifications and put the process in operation from those specifications?

A. There would be no trouble, I think, in doing that from the specifications.

Q. 65. Very plain and intelligible in that respect, are they?

A. Perfectly so, to my understanding.

Cross-examination of J. De Turk by Mr. Freidenrich:

Q. 1. Where has been your place of business since you made this contract that you speak of with Mr. Searle?

402 A. My place of business is in Santa Rosa, Sonoma county.

Q. 2. Have you had an office in this city during that period?

A. No, sir.

Q. 3. Did you ever manufacture sherry?

A. Yes, sir.

Q. 4. By this process?

A. By this process—the Searle process; yes, sir.

Q. 5. Did you manufacture the sherry by the Searle process or any other process before the death of Mr. Searle?

A. I did not; no, sir.

Q. 6. Have you got a wine cellar in your place at Santa Rosa?

A. Yes, sir.

Q. 7. Have you ever heated wines for any purpose?

A. I used Mr. Curtis's heater for heating wines; yes, sir.

Q. 8. How long have you been using any process at all for the purpose of heating wines?

A. Well, it is hard to give a definite answer.

Q. 9. About how long?

403 A. Well, I have used Mr. Curtis' heater since shortly after I purchased one of his machines; I think that was after I got acquainted with Mr. Searle, in 1877–1878, perhaps.

Q. 10. Do you know the various purposes for which heat is applied to wine?

A. I think I do; yes, sir.

Q. 11. Will you state the different purposes?

A. Will I state the Pasteur processes, as near as I can recollect it from memory?

Q. 12. For what purpose is it applied? I don't care about the particular process, but for what purposes is heat at all applied to wine?

A. In making sherry it is for ageing and maturing the wine. The Searle process is for ageing wines of any character, so far as I know, though they have aged *any* only sherries.

Q. 13. Is heat applied to any other wines for any other purpose?

404 A. The Pasteur process claims that it will preserve the wines—fit them for ship- them and carrying where they otherwise will not ship.

Q. 14. Does it necessarily follow when heat is applied to wines that it is for the purpose of ageing the wines? Is it not possible that it is applied for some other purpose?

A. I don't think that the Pasteur process particularly claims that it is for ageing wines, but I am not positive on that.

Q. 15. It don't make any difference what process is used. Can heat be applied to wines for any other purpose than ageing it?

A. I have no knowledge that it can.

Q. 16. Do you know that it is applied at all for the purpose of preserving the wine?

A. As I said before, the Pasteur process claims that the heating of wines fits them for shipping, and of course ages and matures the wine. They claim many things for the Pasteur process, too many for me to enumerate here, for there is a large book printed on the Pasteur process.

405 Q. 17. Will ageing any wines convert them into sherry?

A. No, sir.

Q. 18. Or develop a sherry character in the wine?

A. No, sir. There are certain kinds of wine that will develop a sherry character by heating or by age.

Q. 19. Only a certain kind?

A. Yes.

Q. 20. Then there is a kind of wine which ageing will manufacture into a sherry?

A. Yes, sir.

Q. 21. What wine is that?

A. We make it principally from the mission grape here. It seems to be a natural grape for sherry. I don't know what grapes may be used for sherry in other countries.

Q. 22. Do you know whether wine is heated for the purpose of changing the character by the alteration of the chemical composition?

A. I don't hardly know as I am able to answer that question.

406 Q. 23. Then I will ask you whether you know that heat is introduced into wine for the purpose of changing the flavor of the wine?

A. I never heard it claimed that it would change the flavor of the wine, except by making sherry. I have no knowledge of anything further except what the process describes.

By Mr. DICKINSON:

Q. 24. Do you understand the question? His question is as to heat introduced into wine.

A. Of course it changes the character of wine materially when it is changed into sherry; that I have personal knowledge of. I have no knowledge of changing the character of any other wine.

By Mr. FREIDENRICH:

Q. 25. The Searle process simply manufactures sherry, as I understand you?

A. No, sir; I didn't say that. I say my knowledge is that it changes the character of sherry. I never tried any other wines.

Q. 26. Mr. Searle never made any other wines for you, did he?

A. He did. He aged some clarets or put some clarets through the process.

407 Q. 27. Will you describe the process used in heating what you call must; is the pipe introduced into the tank?

(Obj. Objected to by complainant as irrelevant and immaterial.)

A. Yes, sir.

Q. 28. For what purpose is it introduced into the tank?

A. For the purpose of arresting fermentation and extracting the coloring matter from the skin of the grape.

Q. 29. How is that heat produced?

A. By steam.

Q. 30. Where is the pipe introduced into the tank?

A. In the bottom of the tank.

Q. 31. Near where it is introduced in the Searle process?

A. Something similar—yes, sir; not exactly like it, but similar.

Q. 32. How long has that been in use?

A. I can't say exactly how long. I have used it some seven or eight years back, I suppose.

Q. 33. Do you know whether it has been used by others?

408 A. I am not positive that it has—no, sir.

Q. 34. Are you acquainted with Mr. Groezinger?

A. Yes, sir.

Q. 35. How far is he from your place?

A. 20 or 25 miles from my place.

Q. 36. Have you ever been to his place?

A. Yes, sir.

Q. 37. Did you ever see his process for ageing wines?

A. No, sir; I have been through his place, but never noticed any of his processes.

Q. 38. Did you ever notice any pipes running into any of his tanks?

A. No, sir.

Q. 39. You don't know what process he has been using at his place?

A. I do not; I am not familiar with his process of making wines. I just simply went as a visitor to visit his place.

Re-examination of I. DE TURK by Mr. DICKINSON:

409 Q. 1. Did you see this must process before the issuance of this patent in 1865, as far back as that?

A. No, sir.

Q. 2. Do you know of any one else who used it prior to that date?

A. I do not.

Q. 3. Would it make any difference, Mr. De Turk, whether the pipes by which the steam is introduced into the tank was a straight pipe with an exhaust pipe passing out through the centre or top, as shown in drawing Exhibit B, or whether the steam was introduced by a pipe entering and coming out in nearly the same place, as shown in the drawing Exhibit C?

(Obj. Objected to by respondent on the ground that it does not appear that the witness is an expert, or that he has ever tried the process illustrated in the drawing Exhibit C.)

A. It couldn't possibly make any material difference, because the object to arrive at is to get a certain heat on the wine. You can do it by either process.

410 Q. 4. These other processes that you have mentioned—how do they compare with the Searle process as to the amount of heat put upon the wine at any one time and the length of time it is subjected to such heat?

A. The dry-air process is a slow process that may extend for any length of time, from one month up; I don't know how long it might extend; but the Pasteur process or the process of Mr. Curtis' machine is instantaneous; it is calculated to raise the temperature of the wine to a certain point and the wine passed through and cools as quick as possible there.

Q. 5. It is not, then, a constant, steady application of heat?

A. No, sir; the quicker the better.

Q. 6. Is it under the Searle process a steady application of heat?

A. Yes, sir; the steady application of heat may be continued for two or four months, as the patent here claims, and I suppose it might be extended further.

Q. 7. How is the length of time regulated?

411 A. By the taste and desired results. The operator of the wine tries the wine, and when it reaches a point where he desires he stops the heat.

Q. 8. The same way with the dry-air process, is it?

A. Just the same.

Q. 9. Have you ever heard of any one else excepting Mr. Searle using this Searle process?

(Obj. Objected to by respondent as incompetent — hearsay.)

A. Yes; I have heard of another party using it. I have heard of B. Dreyfus & Co. using it.

Q. 10. Prior to its use by Mr. Searle?

A. No, sir; I have not heard of its being used prior.

(Recess until half past one o'clock p. m.)

TUESDAY, *September* 5, 1881—afternoon.

Present: Mr. Dickinson, solicitor for complainant; Mr. Boon of counsel, Mr. Freidenrich, solicitor, for respondent.

Deposition of Jacob Frowenfeld.

Examination-in-chief of JACOB FROWENFELD on behalf of complainant by Mr. DICKINSON:

412 Q. 1. Mr. Frowenfeld, what is your business?

A. Wine merchant.

Q. 2. Are you a member of the firm of B. Dreyfus & Co., defendants in this action?

A. Yes, sir.

Q. 3. How long have you been such member?

A. Since the firm has been in existence.

Q. 4. Whereabouts in this city is the firm engaged in business now?

A. Brannan street.

Q. 5. And how long has the firm been in existence?

A. About twelve years.

Q. 6. What is the name of your wine vaults?

A. Eagle wine vaults.

Q. 7. Has the firm been engaged in curing wines during the past year or ageing them?

A. No, sir.

Q. 8. That firm has not been engaged in curing or ageing wines at any time during the past twelve years?

A. No, sir.

Q. 9. Are there any tanks there erected by the firm?

413 A. Yes, sir.

Q. 10. Is heat applied to those tanks in any way?

A. Yes, sir.

Q. 11. In what manner?

A. Steam.

Q. 12. How is the steam applied to those tanks or the contents of the tanks? Is the steam applied to the wine in the tanks?

A. Yes, sir.

Q. 13. In what manner?

A. Through pipes.

Q. 14. The steam passes through pipes?

A. Yes, sir.

Q. 15. How are these pipes placed in or about the tanks?

A. Inside; pass into the casks.

Q. 16. In what shape after they enter the casks are they?

A. The shape of a coil, I believe.

Q. 17. Have you seen them—examined them?

A. No, sir.

Q. 18. Didn't you ever see the coils?

A. I am not sure whether I did or not; I am not out there a great deal; in town principally.

414 Q. 19. In what part of the tank does this pipe enter the tank?

A. I cannot tell you. I refer you to the coppersmith. I don't attend to the practical part of the business.

Q. 20. Who attends to the practical portion of the business?

A. Our superintendent does.

Q. 21. What is his name?

A. Mr. Pohndorff.

Q. 22. Is he the superintendent now?

A. No, sir.

Q. 23. How long since he ceased to be?

A. The first of the month.

Q. 24. Is he in the city?

A. I believe not.

Q. 25. Where is he; do you know?

A. I think he is up in St. Helena.

Q. 26. Are these tanks in which these steam-pipes have been placed empty?

A. I couldn't tell you.

Q. 27. Have they at all times been empty?

A. That I don't know.

Q. 28. Have they at any time been empty since they were first constructed?

A. I don't attend to the practical portion of our establish-
415 ment, and therefore I am not able to state whether they are empty or whether they have been, or any thing about them.

Q. 29. You don't know, then, whether wine is manufactured at your establishment or not?

A. I stated that; I stated that we had tanks—such tanks as you said.

Q. 30. Don't you know whether or not those tanks have ever had wine in them?

A. Oh, certainly, I know that.

Q. 31. For what purpose was the wine put into those tanks?

A. For the purpose of storing it.

Q. 32. And then you introduce the heat through the pipes?

A. Yes, sir.

Q. 33. For the purpose of assisting storing the wine?

A. No, sir; not for that purpose.

Q. 34. For what purpose was it done?

A. For the purpose of bringing out certain qualities in certain wines.

By Mr. BOONE:

Q. 35. Then I understand, Mr. Frowenfeld, that these tanks contain wine, do they?

A. Yes, sir.

416 Q. 36. And this pipe goes through the side of the tank into the interior of the tank?

A. Yes; from the outside.

Q. 37. Then this pipe is coiled inside the tank, is it?

A. Yes, sir.

Q. 38. There are several coils?

A. I don't know whether there are several; I know it is the shape of a coil.

Q. 39. Then the pipe comes out of the tank again, does it?

A. Yes; comes out again.

Q. 40. It does not terminate inside the tank?

A. No, sir.

Q. 41. Then steam is passed through the coil when wine is in the tank?

A. Yes, sir.

Q. 42. So that the wine is brought in contact with these heated pipes?

A. Yes, sir.

By Mr. FREIDENRICH:

Q. 43. Your duties are to attend to the office branch of your business, are they not?

A. Yes, sir.

Q. 44. Your office is at a different place from this celler, is it not?

A. Yes, sir.

417 Q. 45. Where is the office of the firm?

A. 121 California street.

Deposition of Henry Sanders.

Examination-in-chief of HENRY SANDERS on behalf of complainant by Mr. DICKINSON:

Q. 1. Mr. Sanders, what is your business?

A. Coppersmith.

Q. 2. In what place?

A. 421 Mission street.

Q. 3. Are you acquainted with the firm of B. Dreyfus & Co., wine dealers here?

A. I am.

Q. 4. During the past year have you done any business for them?

A. I couldn't tell whether it is a year or more or less.

Q. 5. Was it prior to the 15th of last June and after the year 1865?

A. It was after 1865; that is sure.

Q. 6. Was it before the 15th of last June?

418 A. I couldn't tell for sure, because I didn't look on the book to see what time I done it. If I had known it I would have looked to see.

Q. 7. Did you ever make any copper coils for the defendants?

A. I did.

Q. 8. Within a few months last past?

A. No, sir; it might be a year or more—a little over a year, I think. I could not tell the date.

Q. 9. At whose instance did you make those coils?

A. I made them to order for Dreyfus & Co.

Q. 10. What kind of coils were those?

A. Kind of snake coil. I made them when I learned my trade, about 35 years ago—just the coil turned around—I believe turned around twice and came out, just like they use them in breweries for heating water. You can go to every brewery and see them here.

Q. 11. Have you made these for Dreyfus & Co. 35 years ago?

A. I haven't made them for Dreyfus & Co. 35 years ago, but I made the same kind.

Q. 12. Look at this drawing, Exhibit C.

419 A. That ain't the kind of coil I made for them.

Q. 13. In what does it differ?

A. It lays flat on the bottom of the tank—don't stand up.

Q. 14. Couldn't it be raised up?

A. It couldn't be raised up; no.
Q. 15. Or put on a frame?
A. It could not.
Q. 16. Did you see the coil inside the tank?
A. I didn't see the coil inside the tank. I made the coil and the men up there put it in, but the coils wasn't made so that they could be raised up, because both ends go out of the tank, out of the bottom part.
Q. 17. Where did the end of the coil, what you might call the entrance of the coil, enter? Was it near the bottom of the tank?
A. At the bottom of the tank, and the outlet was at the bottom of the tank, and the coil lies flat on the bottom.
Q. 18. Were the outlet and inlet pipes side by side?
A. Close to each other.
420 Q. 19. Side by side, or one above the other?
A. Side by side; not one above the other.
Q. 20. It enters the tank and lies on the bottom, does it?
A. Yes, sir.
Q. 21. How many coils?
A. I couldn't tell. I believe two coils. There was about thirty feet of pipe in each coil.
Q. 22. Was there any exhaust or escape pipe other than the one that passed out at the bottom, that you have referred to?
A. No, sir; there was not.
Q. 23. Where were those coils used that you made for Dreyfus & Co.; — was done with them?
A. The tanks were out on Fifth and Bryant or Brannan street-. I don't know which it was.
Q. 24. In Dreyfus & Co.'s wine works out there?
A. Yes, sir.
Q. 25. How many of those did you make?
A. Six.
Q. 26. Made six of them for six tanks?
A. Six for six tanks.
421 Q. 27. That is, one coil for each tank?
A. Yes, sir.
Q. 28. Was there any difference in them?
A. One was made just like the other.

Cross-examination of HENRY SANDERS by Mr. FREIDENRICH:

Q. 1. Did you ever make similar coils for anybody else?

(Obj. Objected to by complainant on the ground that no notice of testimony of anticipation by this witness has been set up in the answer.)

A. I have made coils, plenty of them, all kinds. In a still you have a coil in there to raise the vapor.
Q. 2. For what purpose did you make similar coils before this?

(Obj. The same objection by complainant.)

A. Heating water.

Q. 3. In what way did they heat water?
A. The same way.
422 Q. 4. By its introduction into the tanks?
A. Yes, sir.
Q. 5. And tanks similar to those used by Dreyfus & Co.?

(Obj. It is agreed that all the testimony of the witness upon this point is taken subject to the objection last above noted.)

A. Similar to the tanks used by Dreyfus & Co.
Q. 6. For whom did you make them?
A. I can't tell who I made them for; I would have to look over the books to tell; you can go nearly all over the city and see them.
Q. 7. Did you make them for different breweries in the city?
A. Yes, sir.
Q. 8. Did you put them into tanks in any brewery in the city?
A. I did, sir.
Q. 9. Where?
A. Philadelphia brewery, Chicago brewery; pretty near all the breweries in the city; they were made twenty years ago.
423 Q. 10. Do you know for what purpose they were put into the tanks in breweries?
A. Heating water.
Q. 11. Within what period of time have you made them?
A. O, I couldn't tell.
Q. 12. Did you make them more than twenty years ago?
A. I am in business sixteen years ago, and done them when I worked for my wages.
Q. 13. That was before twenty years ago?
A. Before twenty years ago.
Q. 14. And you know that they were used in breweries in tanks?
A. I know that they were used in breweries in tanks over twenty years ago.
Q. 15. Coils similar to those that were put in the tanks in Dreyfus & Company's establishment?
A. Yes, sir.
Q. 16. Were not coils of a similar character in general use in this city and county for heating liquids in tanks twenty years ago?
A. Yes; you might call it forty years; not in this State,
424 though, that I know.

Re-examination of HENRY SANDERS by Mr. BOONE:

Q. 1. What is your age, Mr. Sanders?
A. I am fifty-one years old.
Q. 2. How long have you been in this country?
A. I have been in this country since 1853.
Q. 3. What do you mean by this country, the United States?
A. The United States.
Q. 4. How long have you been in California?
A. Since 1863.
Q. 5. Have you been in the same business during all the time that you have been in California?

A. I have; yes.
Q. 6. Where did you reside before you came to San Francisco?
A. New York.
Q. 7. In the same business there?
A. The same business.
425 Q. 8. When did you first make coils of this kind, Mr. Sanders?
A. That is hard to tell. I made them in Germany.
Q. 9. When did you first make them in the United States?
A. That is hard to tell. I made them in New York, I am sure. I worked there for a man by the name of Knox, and he made them for sherry wine; made some kind like it for some kind of sherry wine for a firm by the name of Hoffman & Curtis.

(Obj. Respondent moves to strike out the last clause of the answer as not responsive to the question.)

Q. 10. (Q. 9 repeated.)
A. I didn't make them in New York; I helped make them there. I worked for a boss.
Q. 11. When was that?
A. Well, it was 1854; might be.
Q. 12. In 1854 you made coils in the United States?
A. Yes, sir.
Q. 13. Such coils as used in distilleries you refer to, do you?
A. Yes.
Q. 14. And used for heating wort or mash?
426 A. Yes, sir.
Q. 15. You also made them for heating water?
A. I did.
Q. 16. Do you know what all these coils that you made were used for; did you see them in use?
A. I saw them in use.
Q. 17. All of them?
A. Not all of them; I couldn't tell all of them.
Q. 18. You simply know that you made coils and sold them, don't you?
A. I did.
Q. 19. Did not pay any attention to them after they were gone out of your hands to know what they were used for?
A. Some were used for cooling purposes, some were used for heating purposes.
Q. 20. You did not follow them up after you sold them to find out what the parties who purchased them used them for?
A. No; I did not.
Q. 21. All you know is you made them and sold the coils?
427 A. I got the order for them and made them.
Q. 22. It is a usual article of manufacture for a coppersmith, is it not?
A. Yes, sir. I make them every day myself. I am making some now.

Q. 23. It is part of the regular business of a coppersmith to manufacture such coils?

A. Yes, sir.

Q. 24. And the particular purpose that each coil was used for you never followed up, did you?

A. No, sir; I did not; some of them I did.

Recross-examination of HENRY SANDERS by Mr. FREIDENRICH:

Q. 1. Were you called upon to place any of these coils in the tanks?

A. I was.

Q. 2. Then from that fact you know the use to which they were put, don't you?

428 A. Yes.

Q. 3. Did you put any of them into any tank in any brewery in this city?

A. Yes, sir.

Q. 4. Did you put them into any establishment in New York city when you were there?

(Obj. Objected to by respondent on the ground that no notice of testimony of anticipation by this witness is set up in the answer.)

A. No; not any I could swear to.

Q. 5. Did you help put any of them into any establishment in New York?

A. I couldn't tell; too long ago.

Q. 6. How many breweries have you put similar coils in, to your recollection, in this city during the time that you have been in this city?

A. Well, I can remember three.

Q. 7. About when were they put in, as near as you can give the time?

A. About a year ago.

Q. 8. Did you put any in as much as ten years ago?

A. O, I did; I put one in about a year ago in the stock brewery.

429 (Obj. Respondent objects to the above answer, and moves that it be stricken out as immaterial.)

Q. 9. You say that as much as ten years ago you put coils into tanks of some of the breweries in this city?

(Obj. Objected to by respondent as immaterial.)

A. I did.

By Mr. BOONE:

Q. 10. The coils that you placed in tanks in breweries were for cooling, were they not?

A. Some for cooling and some for heating. When it comes to a shape like this (coil shown in drawing, Exhibit C), where it rises, I have to pay twenty dollars tax on it. They claim that they can

make whisky out of it. I don't make no coils like this marked off here (in Exhibit C) without I pay my tax.

Q. 11. It is within the last ten years that you say you have made those for breweries?

A. Yes, sir.

430 *Deposition of W. L. Daniel.*

Examination-in-chief of W. L. DANIEL, on behalf of complainant, by Mr. BOONE:

Q. 1. What is your name?

A. W. L. Daniel.

Q. 2. What is your business?

A. Plumber and gas-fitter.

Q. 3. Where?

A. 234 Post street.

Q. 4. How long have you been in that business?

A. Over thirty years.

Q. 5. How long in this city?

A. About twenty-six.

Q. 6. Have you done any plumbing work for the defendants in this case, B. Dreyfus & Company?

A. Yes, sir; I done plumbing work for them.

Q. 7. What was the nature of that work?

A. Making water-closets, waste-pipe, sinks, soil-pipes, and so forth.

Q. 8. Did you have anything to do with placing coils of pipes in tanks for them?

A. Nothing whatever.

431 Q. 9. Never?

A. I had the connecting of them.

Q. 10. When was that?

A. Some time ago; I couldn't tell exactly about the time.

Q. 11. About what time?

A. It is over a year ago, I should think. I could suppose so; I can't say for certain.

Q. 12. Just state what the nature of the coil was, where it was placed, and what the nature of the work was that you did.

A. I didn't do the work at all. I had a man employed by me and supplied him to the company called Dreyfus & Company, and he put the pipes in according to their instructions. I supplied the labor and the material.

Q. 13. So you had nothing to do with doing the work at all?

A. No, sir.

Q. 14. Did you see the coil?

A. Yes, I saw the coil.

Q. 15. Where was it when you saw it?

A. It was in the barrel.

Q. 16. Ready to be connected?

A. Yes, sir.

432 Q. 17. How large was the barrel?

A. I can't say; it might be eighteen feet high.

Q. 18. A tank, was it not?
A. Yes, sir; a vat.
Q. 19. Then this coil was in the tank when you saw it?
A. In the bottom of the tank.
Q. 20. And the plumbing was to connect the end of the coil with the pipe outside of the tank?
A. There was no plumbing.
Q. 21. The work that was to be done was to connect the end of the coil with the pipe outside of the tank?
A. Yes, sir.
Q. 22. Through the side of the tank?
A. Yes, sir.

Complainants rests.

Continued, by consent of counsel, for taking testimony on behalf of respondents until Tuesday, 19th instant, at ten o'clock a. m.

TUESDAY, *September* 19, 1882.

Further continued, by agreement of counsel, to Tuesday,
433 October 24th, 1882, at ten o'clock a. m.

TUESDAY, *October* 24, 1882.

Further continued, by agreement of counsel, to Tuesday, November 7th, at ten o'clock a. m.

TUESDAY, *November* 7, 1882.

Further continued, by agreement of counsel, to Tuesday, 14th inst., at ten o'clock a. m.

TUESDAY, *November* 14, 1882.

Present: Mr. Dickinson, solicitor, and Mr. Boone, of counsel, for complainant; Mr. Friedenrich, solicitor, and Mr. Scrivner, of counsel, for respondents.

Deposition of Henry Sanders.

Examination-in-chief of HENRY SANDERS, recalled on behalf of respondents, by Mr. FREIDENRICH:

Q. 1. You are the gentleman who testified in this case on behalf of the complainants?
A. I am.
Q. 2. To the effect that you had made the coils for the respondents in this case?
434 A. Yes, sir.
Q. 3. What is your business?
A. Coppersmith.
Q. 4. How long have you been engaged in that business?
A. For myself, about fifteen years—fourteen or fifteen years.
Q. 5. And what were you doing prior to that time?
A. I worked for wages at the same trade.
Q. 6. Where?
A. Here in San Francisco and in New York.

Q. 7. Altogether, how long have you been engaged in that business, both as proprietor and as laborer for others?

A. Since 1844.

Q. 8. When did you first make a copper coil similar to those made for the respondents in this case?

(Objected to and withdrawn.)

Q. 9. Did you ever make a copper coil similar to the one made for the respondents at any time prior to the time when you made these for them?

(Obj. Objected to by complainant unless it be shown that
435 such coils were made, if at all, for a purpose similar to that for which respondents' coils were made.)

A. I did.

Q. 10. When did you first make a coil similar to the one that you made for the respondents?

A. I helped make one, when I was not in business for myself, between 1855 and 1860, when I was in New York city.

Q. 11. Did you make more than one during that period, or did you help make more than one during that period?

A. O, it was a common thing, making those coils.

Q. 12. About how often were they made in the shop in which you were employed during the period between 1855 and 1860?

A. Well, I could not tell.

Q. 13. Can you approximate?

A. No, sir; it is so long ago I could not approximate.

Q. 14. Can you tell whether it was as often as once a month?

A. No; I couldn't tell whether it was once a month, but
436 it was a common thing; might come every day, a job like that.

Q. 15. Do you know the purposes to which these coils were applied?

A. The coils are made for heating purposes.

Q. 16. Heating in what way? Please explain.

A. To let steam go through the coil and heat a liquid.

Q. 17. Within what vessels were these coils placed for the purpose of heating liquid?

A. In wooden tanks, in iron tanks, in copper tanks, as the case may be.

Q. 18. Were you yourself at any time engaged in placing these coils in any of these receptacles?

A. I was.

Q. 19. State when and describe the vessels in which the coils were placed.

A. All I can recollect is, first, I done it in New York in copper stills and in wooden tanks.

Q. 20. During what period was this done by you?

A. What time?

Q. 21. What time; yes.

437 A. It was done between 1855 and 1860, in that neighborhood, because I worked in New York then.

Q. 22. What kind of liquids were heated in this manner, to your knowledge?

A. There was heated spirits and wine.

Q. 23. Any other liquids?

A. Water, too.

Q. 24. Now, since 1860, have you been engaged in making them?

A. I have; yes.

Q. 25. Where?

A. Here in San Francisco. In 1863 I came here to San Francisco.

Q. 26. How soon after you first entered into the business here did you begin making these coils?

A. It is hard to tell because it is common that most any month we make them.

Q. 27. Could you state that it was during 1863 or 1864 that you made a coil similar to the ones made for the respondents?

A. I did. I was in business for myself, but I helped make them.

Q. 28. Can you state that it was more than one that you helped make during those years?

438 A. O, yes. I have helped make more than one.

Q. 29. Did you help place any of those coils which you made or helped make in 1863 or 1864?

A. I could not remember more than one.

Q. 30. Since that time have you been making them?

A. Yes, sir.

Q. 31. Do you remember making any in the year 1865?

A. I could not remember. I could not tell exactly until 1867, when I went into business for myself. I could look over my books and see how it is since then.

Q. 32. Can you state about how many you have made since 1867, when you went into business for yourself?

A. At least about fifty, I think; pretty near fifty all together.

Q. 33. Have you helped in placing any of those coils?

A. I did.

Q. 34. For what purpose were they used?

A. Heating liquid.

Q. 35. Where?

439 A. Pretty near in all wineries and distilleries.

Q. 36. And breweries?

A. Breweries, too.

Q. 37. Will you name me some persons for whom you have made them in this city since 1867?

A. In this city I have made some for the Chicago brewery, Stock brewery, United States brewery, I believe; I could not swear to that, though; and I repaired some for the Philadelphia brewery for Mr. Willand; old ones. I made some for Cutting & Company.

Q. 38. What kind of coils were these; what material were they made of?

A. Copper.

Q. 39. In what way were they placed?

A. They were placed flat in the bottom.

Q. 40. In what way did they enter the cask or tank?

A. Some enter in the side of the tank, down at the bottom, and the others go up again.

Q. 41. The coils were made to lie flat on the bottom of the cask?

A. Flat on the bottom.

440 Q. 42. Were they placed in about the same manner that the coils were placed in the casks of the respondents by you?

A. They were; some of them were, and some of them were put in so that you could lift them out—connect them on top.

Q. 43. Were these which you made in San Francisco since 1867 made in the same way as the coils which you had helped to make in New York?

A. They were; yes, sir.

Q. 44. Were they placed in the casks in the same manner?

A. The same manner.

Q. 45. Then, as I understand you, you assisted at first in making these coils in New York between 1855 and 1860, and placing them in casks or tanks in the same manner that you subsequently did in San Francisco?

A. The same manner.

Q. 46. And that manner was similar to the manner in which you placed them in these casks for the defendants?

A. Yes, sir; I may go further. I helped make them in Germany before I came to the United States.

441 Q. 47. The same coils?

A. The same—an old thing.

Q. 48. Were they used in Germany in about the same manner?

A. They were.

Q. 49. For what purposes were they used there?

(Obj. Objected to by complainants as immaterial.)

A. They were used for boiling purposes—heating purposes.

Q. 50. Heating liquid?

A. Heating liquids.

Q. 51. And you there assisted your employer in making them and placing them in tanks; is that your testimony?

A. I wouldn't say in tanks, but I placed them in copper vessels.

Q. 52. That was before you came to the United States?

A. Yes, sir.

Q. 53. While you were working at your trade in Europe?

A. Yes, sir.

Cross-examination of HENRY SANDERS by Mr. DICKINSON:

442 Q. 1. Mr. Sanders, I understand you that you made a copper coil similar to the one that you made for the respondents here somewhere between 1855 and 1860 in New York?

A. I did.

Q. 2. For whom was that coil made?

A. A firm by the name of Hoffman & Curtis.

Q. 3. And where was it used?

A. Used in a distillery. They had a distillery and sherry-house; made sherry wine.

Q. 4. Where was this copper coil used?

A. This copper coil was used in tanks and in the still.

Q. 5. Do you mean to say that the same copper coil was used in both?

A. O, no; they had more than one.

Q. 6. It was used in the still and also in the tank?

A. Yes; but different coils; certainly they could not use the same one in the still and in the tanks.

Q. 7. You put these in?

A. I helped put them in.

Q. 8. How large were the tanks?

443 A. That is hard to tell or estimate now—so long ago; must be about between six and eight foot high and about nine foot diameter, but that I could not tell exactly.

Q. 9. What length of time was the heat applied through these coils to the contents of these tanks?

A. That I don't know.

Q. 10. Did you ever see any sherry wine in these tanks?

A I did; I have been drinking it.

Q. 11. And the heat applied to it?

A. Yes, sir.

Q. 12. Do you know how long it was applied and for what purpose?

A. I could not tell.

Q. 13. Do you know where the wine that was put in those tanks was procured?

A. I could not tell.

Q. 14. Was sherry wine produced in the United States at that time in sufficient quantities to run a still?

A. Well, I know they had tanks there where they made it in New York.

Q. 15. What was that wine when put into the tanks? Was

444 it raw wine or wine that was already made?

A. That I couldn't tell; I know they told me it was sherry wine, and I drank of it.

Q. 16. Do you know for what purpose the heat was applied to it?

A. I didn't know them days.

Q. 17. Do you know what length of time the heat was applied to it?

A. I don't know.

Q. 18. Do you know whether the wine was purchased in America or imported from abroad?

A. I could not tell.

Q. 19. Do you know whether it was raw wine or whether it was real wine when it was put in the tanks?

A. I could not say; all I can say is what I have said about it.

Q. 20. These coils have been used in stills everywhere for many years, have they not?

A. They have.

Q. 21. When you refer to the copper arrangements in Germany — which the coils were put don't you refer to stills?

A. I have reference to stills; for other purposes, too.

445 Q. 22. What other purposes?

A. Sugar—well, for boiling purposes; any boiling purposes.

Q. 23. Did you ever see a copper coil applied to a tank in which wine was kept in Germany?

A. Wine was kept—they called it wine; I don't know whether it was wine or not.

By Mr. FREIDENRICH:

Q. 24. Then your answer is that you did?

A. I did.

By Mr. DICKINSON:

Q. 25. What kind of wine?

A. Sherry wine; they called it sherry wine; that is all I can tell you.

Q. 26. Did you ever see heat applied in this way to claret?

A. No.

Q. 27. Did you drink some of that wine?

A. I did.

Q. 28. Where was this?

A. It was in the same place where I referred to, Hoffman & Curtis.

Q. 29. In Germany I speak of.

A. O, no; the part of the country where I came from in Germany there was no wines.

446 Q. 30. You have no knowledge, then, of the purpose for which these coils were applied to wine in New York?

A. I have not.

Q. 31. What other place besides Hoffman & Curtis do you know of in New York where such coils were used?

A. I don't know of any other place there.

Q. 32. Do you know Mr. Curtis, of that firm of Hoffman & Curtis? Is he the same Mr. Curtis that is here in this city?

A. I don't know.

Q. 33. This firm of Hoffman & Curtis, did they run a distillery at that time?

A. They did.

Q. 34. You say that they ran a wine house in addition to their distillery?

A. They did.

Q. 35. Do you know whence they obtained the wine that they handled in this wine house?

A. I don't know.

Q. 36. And you don't know anything about the details of the application, as to what length of time the heat was kept up?

A. I don't know; I could not tell.

447 Q. 37. Or as to what the object was for which the heat was applied?

A. I didn't know them days.

Q. 38. Copper coils similar in form to these are used for a great many purposes, are the- not?

A. They are.

Q. 39. They are used for heating rooms sometimes, are they not? Similar coils are used in state-rooms on steamers and other places?

A. No; not similar to that.

Q. 40. What is the difference?

A. They mostly run lengthways, with short elbows.

Q. 41. That is the only difference, is it?

A. That is all.

Q. 42. Now, then, I understand you to say that they are used for heating liquors in this city in wineries and distilleries. What wineries have you furnished coils to in San Francisco? You mentioned the distilleries.

A. Only B. Dreyfus, here in San Francisco.

Q. 43. What did you refer to when you stated that you had made these coils, some fifty all together, for heating liquors in wineries and distilleries?

448 A. I made them for wineries in California here.

Q. 44. What wineries are they used in?

A. De Turk, Groezinger, Krug.

Q. 45. Are any used by De Turk?

A. Yes, sir.

Q. 46. For what purpose?

A. For heating wine.

Q. 47. You know that, do you?

A. I do.

Q. 48. How do you know that he uses them for heating wine?

A. He told me.

Q. 49. Is that all the way you know? Did you hear his testimony here at the former hearing in this case as to what he used them for?

A. I did not.

Q. 50. And you are satisfied and you are prepared to swear that he uses that coil for heating wine?

A. Well, I wouldn't swear to it, but if I had a fair trial I would bet a hundred to one.

Q. 51. I want to find out now how you know that he uses it. You have testified absolutely that he uses that coil to heat wine. Now, I want to know how you know it?

449 A. Because they told me they used it for that.

Q. 52. Where and when?

A. In the shop and when I made them when the order was given?

Q. 53. For the purpose of heating wine?

A. Heating wine.

Q. 54. Did he describe to you how he was going to use that coil?

A. No; he did not describe to me.

Q. 55. How do you know that Krug uses it?

A. Because he gave me the order for coils in a wine-tank.

Q. 56. Where?

A. He wrote a letter down. No; he didn't write a letter down. Yes; he wrote a letter similar to Dreyfus.

Q. 57. I am asking you how you know he uses it?

A. From my experience—my judgment.

Q. 58. Just relate what your experience is, then, if you are going to draw facts as to what other men do from yours experience.

A. I have seen them in wine-tanks.

Q. 59. Where?

A. Groezinger.

450 Q. 60. Where is that?

A. Jointville, Napa county.

Q. 61. What kind of a tank was that in which you saw the coils?

A. Wooden tank.

Q. 62. A large tank, open at the top?

A. Open when the wine was put in. They might have closed it afterwards.

Q. 63. I am not asking you what they might have done. I am asking you what was done. What kind of a tank was it that you saw these worms in?

A. Wooden tank.

Q. 64. Open at the top, was it not?

A. I did not look at the top.

Q. 65. Was it not the tank used for the putting of the pumice in when the grapes were first mashed?

A. It was not.

Q. 66. How do you know it was not if you did not look at the top or into it?

A. I know about how they make wine; that they don't use coils for pumice tanks.

451 Q. 67. Don't they sometimes use coils to introduce heat into tanks that the grapes have been mashed or pressed in for the purpose of extracting the color from the skins, &c., of the grapes?

A. Not that I know of.

Q. 68. They never use them for that?

A. Not that I know of.

Q. 69. What experience have you had? I understand you to say that you know enough about making wine to know that coils are never used in pumice tanks. What experience have you had in wine making?

A. My experience is not far, but my common sense tells me. I don't know, but I was told that Mr. Groezinger makes port wine and all those things and heats the wine up?

Q. 70. You were told so?

A. Yes, sir.

Q. 71. Have you ever seen it done? Have you been up there and investigated it?

A. I never investigated it.

Q. 72. You are satisfied now, from your knowledge of wine mak-

ing, that these coils are never introduced into the pumice
452 tanks for such purposes as I have indicated for extracting the color or for heating up the must? You are prepared to swear now that these coils are never used for the purpose of heating that up?

A. I am not prepared to swear, but I don't believe that they use them that way.

Q. 73. How many tanks had Mr. Groezinger in which these coils were used?

A. I am sure he has got two, if not more.

Q. 74. When did you see them?

A. About five or six years ago.

Q. 75. How long had he had them—the coils?

A. I made the coils for him.

Q. 76. When?

A. About five or six years ago.

Q. 77. About five or six years immediately past?

A. Well, pretty near; I could not tell exactly the time.

Q. 78. You had been in this country some time when you saw these there?

A. Yes, sir.

Q. 79. You made the coils for those tanks some five or six years ago?

453 A. Yes, sir.

Q. 80. I understand you to say that Mr. Krug used them?

A. Yes, sir.

Q. 81. Where did he used them?

A. Mr. Krug, he got his lately.

Q. 82. After coming to San Francisco, whose was the first winery that you ever made copper coils for or coils similar to this that you made for the respondents?

A. That is a question I could not answer.

Q. 83. And how long ago was it that you first made any copper coils for any winery?

A. While I was in business for myself?

Q. 84. Since you came to San Francisco?

A. I think Mr. Groezinger was about the first party.

Q. 85. And that was about five or six years ago?

A. Yes; about five or six years ago. There might have been some before, but I don't remember now.

Q. 86. How long since Krug ordered them?

A. About two months ago.

454 Q. 87. Now, besides Krug's and Groezinger's and Mr. De Turk's, what other wineries are these coils used in?

A. Mr. Crabb's.

Q. 88. Where is his?

A. It is in Oakville, Napa county.

Q. 89. For what purpose does he use his coils?

A. I don't know; I have not seen them there.

Q. 90. How long ago did you make them for him?

A. It must be about eight months ago.

Q. 91. Then these coils that you made, commencing with your arrival here—in 1863 did I understand you to say that you came here to this city?

A. Yes, sir.

Q. 92. These coils that you made after that date and up to four or five years ago, when you made the Groezinger coils, for what purpose were those coils used?

A. For heating purposes.

Q. 93. Where?

A. In distilleries and packing houses where they made preserves; Cutting & Company and Krug, breweries.

455 Q. 94. In packing houses how were these coils used—in large tanks?

A. In large tanks and small tanks.

Q. 95. In wooden tanks or copper vessels or tin vessels?

A. Wooden tanks.

Q. 96. Used for heating purposes?

A. Used for heating purposes.

Q. 97. When did Cutting & Company first use them?

A. I could not tell what time they used them first, but we made them in New York for packing companies, for cooking preserves.

Q. 98. How were they used there—put in tanks always?

A. Put in tanks.

Q. 99. How large tanks are used for making preserves in?

A. I never measured the tanks; I could not tell how large they were.

Q. 100. Is it customary to use large wooden tanks in making preserves?

A. They don't use them as large as what they do in wineries.

Q. 101. For what purpose were they used in the breweries where you put them?

A. For heating liquid.

456 Q. 102. What liquid?

A. Beer or water.

Q. 103. What is heated? Did they heat the beer or the malt?

A. They heat the malt, what they call the wort.

Q. 104. Is that the liquid that you refer to?

A. I do.

Q. 105. How is the coil applied for that purpose?

A. Steam going through it.

Q. 106. I mean how are the coils applied?

A. Flat on the bottom of the tank, and the steam goes in from the outside and goes out again.

Q. 107. How large were the tanks in these breweries that you have referred to?

A. From six to eight feet in diameter.

Q. 108. Were these tanks closed on the top?

A. They are not.

Q. 109. Were they tight tanks?

A. They are not.

Q. 110. How were the tanks that were used in packing houses; were they closed on the top?

457 A. Open tanks.

Q. 111. How were the tanks in which you have applied these coils been; have they been open or closed tanks?

A. Open.

Q. 112. How was the sherry tank in New York?

A. In New York it was open.

Q. 113. All these tanks in which you have applied these coils have been open tanks, then?

A. Open tanks.

By Mr. FREIDENRICH:

Q. 114. In what way was the heat applied to the liquids—by steam?

A. By steam.

Q. 115. That is, in the tanks in which you placed coils, both in New York and in California?

A. Applied by steam.

By Mr. DICKINSON:

Q. 116. To what extent was the heat applied—to the extent of boiling?

A. I could not tell.

Q. 117. Were you not around these tanks a good deal?

458 You used to be drinking the wine from that sherry tank in New York; do you know whether the wine had been boiled in the tank? Didn't you hear anything about it or know anything about it?

A. No; it didn't boil in the tanks in New York.

Q. 118. How do you know it did not?

A. Because I have been round there and looked at it. I drank some of it, too.

Q. 119. You mean it did not boil while you were there?

A. It did not boil while I was there.

Q. 120. Could it not have been boiled when you were away, or were you there so constantly that they could not have boiled it without your knowing it?

A. I don't know.

Q. 121. Were you there so constantly that they could not have boiled it without your knowing it?

A. I was not round there all the time. I just did my work there.

Q. 122. Then how do you know that it did not boil at any time?

459 A. I know that I dipped out some of it and it was not boiling. I don't know whether they boiled it or not when I was away.

Q. 123. They might have boiled it when you were away or asleep?

A. I don't know what they did when I was away.

Q. 124. Have you had any experience in wine making more than applying these copper coils in tanks?

A. I have not; I have run a still.

Q. 125. These copper coils have been used for many years in stills, have they not?

A. Yes, sir.

Deposition of John Wieland.

Examination-in-chief of JOHN WIELAND on behalf of respondent by Mr. FREIDENRICH:

Q. 1. Please state your name, age, place of residence, and occupation.

A. My name is John Wieland; my age, fifty-three years last
460 October; I live in San Francisco, 236 Second street, and I am a brewer.

Q. 2. How long have you been engaged in the brewery business?

A. Since the 1st day of August, 1855.

Q. 3. Where?

A. On Bush street first, where the Alhambra Theater is now.

Q. 4. Since that date you have been engaged in that business in San Francisco?

A. Yes, sir.

Q. 5. And you are proprietor of the Philadelphia beer brewery?

A. Yes, sir.

Q. 6. I will ask you whether in your business you have occasion to use copper coils for boiling purposes?

A. I have got one copper coil; I believe it is about twenty-five years —; for heating water.

Q. 7. In what manner is the heat applied?

(Obj. Objected to by complainant as immaterial.)

A. By exhaust steam.

Q. 8. What kind of a vessel is the water in?

A. It is a tub of about fifty or sixty barrels.

461 Q. 9. In what way is the coil used?

A. It is used the same as Mr. Sanders stated; it is put in and run up.

Q. 10. Does it enter on the side?

A. It enters upon the side at the bottom, and coils round till about half way up to the top.

Q. 11. And where does it leave the tank; does it again come out; does the coil run through the tank and come out?

A. Yes; I think it does.

Q. 12. Then, as I understand you, the copper coil enters the tub at the bottom—on the side?

A. Yes, sir.

Q. 13. Forms a coil inside, and then passes out through the top of the tub?

A. Yes.

Q. 14. Is it a closed tub?

A. Yes.

Q. 15. And will contain from fifty to sixty barrels of water?
A. Yes, sir.
Q. 16. How long do you say you have been using the coil?
462 A. I think it is about twenty-five years.
Q. 17. For that purpose?
A. For that purpose.
Q. 18. At your brewery in this city?
A. At my brewery in this city.

Cross-examination by Mr. DICKINSON:

Q. 1. You say this is an open tank, do you?
A. No; the thing is covered.
Q. 2. How covered—with a permanent cover?
A. There is a cover over it—put on the top.
Q. 3. A cover that lifts off?
A. Yes; we can open it; it is a cover laid over.
Q. 4. Do you take the entire top of- if you want to?
A. Yes; the cover just lays on the top.
Q. 5. It is not like the head of a barrel?
A. No.
Q. 6. The top is not fastened at all, is it?
A. No.
Q. 7. That is used for boiling water?
463 A. It is used for washing barrels in.
Q. 8. That is all you use coils for?
A. That is all.
Q. 9. Do you know anything about the process of wine making and curing?
A. No; not with steam. I am a wine grower in the old country, but we never used steam for it.
Q. 10. Did not use any heat or steam?
A. No; never did.

Deposition of Henry Ahrens.

Examination-in-chief of HENRY AHRENS on behalf of respondent by Mr. FREIDENRICH:

Q. 1. State your name, age, place of residence, and occupation.
A. My name is Henry Ahrens; my age, fifty years; I live in San Francisco, and I run a brewery.
Q. 2. You are one of the proprietors of the Chicago brewery, in this city, are you?
A. Yes, sir.
Q. 3. How long have you been engaged in the brewery business?
464 A. Well, I have generally been driving.
Q. 4. How long have you been connected with the brewery business?
A. A little over ten years.
Q. 5. In your business have you occasion to use copper coils for heating purposes?

(Obj. Objected to by complainant as immaterial, unless it be shown that the witness has some knowledge of wine making.)

A. I ain't got no knowledge of the inside business. If you want anything about that you will have to ask the foreman of the brewery.

Deposition of Henry Voorman.

Examination-in-chief of HENRY VOORMAN on behalf of respondent by Mr. FREIDENRICH:

Q. 1. State your name, age, place of residence, and occupation.

A. My name is Henry Voorman; I am fifty-six years old; I live in San Francisco, and I am connected with the Pacific distillery.

Q. 2. How long have you been engaged in the distillery business?

465 A. Fifteen years.

Q. 3. In that business have you had occasion to use copper coils for heating purposes?

(Obj. Objected to by the complainant, as the witness has shown by his own testimony that he was not engaged in the distillery business prior to the issuance of complainant's patent.)

A. I have.

Q. 4. State the purpose for which such coils had been used.

A. Principally for heating high wines.

Q. 5. In what manner was the heat applied?

(Obj. Objected to by complainant as irrelevant and immaterial.)

A. Through a copper coil passing into the bottom of a copper kettle.

Q. 6. How did the coil leave the kettle?

(Obj. The same objection by complainant.)

A. Near the bottom. One entrance of the coil is on one side of the kettle and the other on the other, and the steam passes
466 into this coil from the steam-boiler, and after it has done its work it is passed out the other way.

Q. 7. Do you know how long that system of heating high wines has been in use?

(Obj. The same objection by complainant.)

A. I don't know how long, but it was in use when we started the distillery, in 1865. It was in use in New York at the time.

Q. 8. What time in 1865; do you remember?

A. Some time in March.

Q. 9. And where did you say it was in use at that time?

A. A large still was imported from New York which had been used there quite a number of years, and that still had a coil like we used afterwards; similar to it.

Q. 10. Was that copper vessel open or closed at the top?

A. Closed. These vessels—you may call them closed, because there is a column sets on top, and the column has an opening

through which these vapors pass. We have had different vessels, from two thousand to six thousand gallons capacity.

467 Q. 11. Do you know whether these copper coils have been used for the purpose of heating in other localities?

A. I have not used them myself.

Q. 12. Do you know of their being used by others?

A. I only know by hearsay; that is all.

Q. 13. You have no personal knowledge of it?

A. I have no personal knowledge of it.

Cross-examination by Mr. DICKINSON:

Q. 1. What is the object, Mr. Voorman, of applying this heat to the still in the manner you have done?

A. To evolve the alcoholic vapors.

Q. 2. And there is an opening at the top of the still to permit their escape?

A. There is another large worm or coil which is attached through which these vapors pass, and they are cooled as they pass through there, and as the vapors are condensed they pass into other vessels.

Q. 3. And there is an opening at the top for the escape of

468 the vapors?

A. Yes, sir; of course; there has to be or it won't work.

Q. 4. It is a sharp heat that is applied to the still, is it not?

A. We use both escape steam and direct steam to save all the heat we can; we apply heat by steam of eighty pounds pressure or more.

Q. 5. This process that you are describing now, is it not merely the process of distilling?

A. That is all.

Q. 6. Have you seen Guplit's still, up here on Sansome street?

A. No, sir.

Q. 7. What is the guide in the application of heat to the still, as to the degree of heat and the length of time which it is to be applied?

A. A person has charge where the outlet is, and as the vapors condense and the steam decreases he lets on steam so as to give more heat; regulates it so as to give more of these condensed vapors or less.

Q. 8. How long does the operation continue?

469 A. That depends on how many gallons you have, how large a vessel you have got, and how large the outlets are; for instance, with the present kettle we use it takes about twenty-four hours to perform the operation.

Q. 9. You continue the application of the heat until the alcohol in the vessel is evaporated, do you?

A. Yes, sir.

Q. 10. That is your guide?

A. That is our guide.

Q. 11. When there is no more alcohol left in the liquid—that is, in the still—you withdraw the steam?

A. Yes, sir.

Q. 12. Then the object of your process is accomplished?
A. Then the object is accomplished for which the arrangements is made.
Q. 13. It is not used for curing liquor any way?
A. It is used for the object of refining the liquor.
Q. 14. For distilling?
A. For distilling.

470 *Deposition of Jas. M. Curtis.*

Examination-in-chief of JAMES M. CURTIS on behalf of respondent by Mr. FREIDENRICH:

Q. 1. Please state your name, age, place of residence, and occupation.
A. My name is James M. Curtis; my age, fifty years. I live in San Francisco. I am a gauger.
Q. 2. Have you ever been in the wine business?
A. I have.
Q. 3. During what time?
A. From 1867 to 1878.
Q. 4. Where?
A. In this city.
Q. 5. Are you familiar with the copper coils spoken of in this case and the uses to which they are applied?
A. Yes, sir.
Q. 6. In what manner have you become familiar with their uses?

(Obj. Complainant objects to any testimony on the part of this witness as to the uses of the coils referred to during the said
471 period of time, as the complainants' patent was in force during all that time, on the ground that such testimony is incompetent, irrelevant, and immaterial.)

A. In 1867 I became acquainted with John Searle, now deceased, who was then putting in practice his system of making sherry by heating with steam—heating by indirect steam. I purchased a lot of wine that he had made which was not a success. He had previously to that made one lot which was exceedingly good. The second lot I purchased for vinegar making. It was a failure. After that I supplied him with wines to be treated in this manner, and took the wines and sold them, and we were interested in it as partners—that is, the company which I represented, the Lake Vineyard Wine Company, was interested with him in these wines. In 1872 I was personally connected with him in the manufacture of sherry—the manufacture and sale of it—by this process. I was at that time very much interested in discovering a method or making a
472 practical application of the Pasteur system of heating wine and experimented with various wines on that for the instantaneous application of heat and afterwards cooling. In connection with that I corresponded with Mathias Keller, of Las Angeles, who was experimenting in a large way by heating by indirect steam.

Obj. Mr. DICKINSON: We object to this statement as to the correspondence of the witness with Keller, and particularly as to anything which Keller may have written or told to him, as incompetent and immaterial.

By Mr. FREIDENICH:

Q. 7. Go on, Mr. Curtis.

A. Mr. Matt. Keller was attempting to accomplish the same purpose—that is, the application of the Pasteur method of heating wine for the purpose of preserving and ageing it on a different plan—that is, by the slow application of heat, and informed me of his success and his failures in that. He had heated about twenty thousand gallons successfully by indirect steam.

By Mr. DICKINSON:

Q. 8. Let me ask one question. Do you know this of your own knowledge?

473 A. I know it only from correspondence with Mr. Keller. I never was at his place.

(Obj. Complainant objects to and moves to strike out all the evidence of this witness in relation to Mr. Keller and his experiments and operations on the ground that it is incompetent, being hearsay.)

By Mr. FREIDENRICH:

Q. 9. Do you know of these coils being used for heating purposes, for the purpose of heating liquids?

(Obj. Objected to by complainant, unless the question be made specific as to time, on the ground that the question is uncertain.)

A. I have seen the coils used for heating in distilleries in Dawe's distillery, of which I was agent in 1869, and at the Pacific distillery.

Q. 10. Did you see the coils used at any time prior to 1865?

A. No; I never had any connection with this business, or anything akin to it prior to 1865. 1866 was the first time I ever saw a distillery. Then I was quit- familiar with the Pacific distil-

474 lery, of which Mr. Voorman was one of the proprietors.

Q. 11. During that year, 1866, did you see a coil used similar to the coils spoken of by the witnesses in this case?

A. Similar in plan, but much larger; I mean by similar in plan, similar to the one that Mr. Sanders has described as being a horizontal coil laid on the bottom of the tank. Mr. Searle did not use any coil at all.

Q. 12. You say in 1866 you first saw coils used?

A. Yes, sir; in the Pacific distillery.

Q. 13. For what purpose were they used there?

A. In running over alcohol.

By Mr. DICKINSON:

Q. 14. The same pipes as described by Mr. Voorman, was it not?

A. Yes, sir; precisely.

By Mr. FREIDENRICH:

Q. 15. You say you have been familiar with the wine-making business from 1867 to 1878?

A. Yes, sir.

Q. 16. For what purpose is heat applied to wine?

475 A. It is applied to change the character of the wine, particularly in the so-called sherry made, making wines in imitation of sherry. The new wine, being acted upon quite a short time, acquires a different character, quite different from what it would have by remaining a few years. When cooking is finished the so-called sherry is undrinkable; it is sickening, but with age after that, if the proper kind of wine has been used, it will develop a flavor resembling sherry or Madeira wine.

Q. 17. Is heat applied for any other purpose than ageing wine?

A. That is a matter of definition. I do not call the effect of heating wine ageing it at all; it imparts no age. The wine improves with age afterwards, if proper wines are used and the heat is properly applied, but it does not age the wine. In heating port wines the wine is supposed to be mellowed somewhat.

Q. 18. By heat?

A. Yes, sir; and the heating prevents the further develop-

476 ment of free acid in wine. Those steam-heated wines with age might develop the Madeira or sherry flavor; other wines with time develop a free acid that destroys their flavor; while it may have the smell of Madeira or sherry, it may not have the flavor. Heat destroys the free acid.

Q. 19. That is, in your judgment, one of the prime causes of heating it, to prevent that free acid from affecting it?

A. Yes; with the development of the following age.

Cross-examination of JAMES M. CURTIS by Mr. DICKINSON:

Q. 1. The object of the application of the Pasteur process is to kill the fermentation in the wine, is it not?

A. Yes; and it was claimed also technically to age the wine.

Q. 2. Isn't that the result which follows the accomplishment of his object, the killing of the fermentation?

A. Yes, sir.

477 Q. 3. Isn't that the only object?

A. At the time Pasteur first published his theory, in 1865, the heat was applied as high as seventy-five degrees centigrade, about one hundred and sixty-five degrees Fahrenheit, and was applied slowly. The previous machines gotten up in France for that purpose have been improved constantly by reducing the time of exposure till the best French machine ever presented has reduced it to forty seconds; but Pasteur never reduced it to less than an hour to an hour and a half.

Q. 4. How long?

A. An hour to an hour and a half.

Q. 5. How did Pasteur apply the heat to his wines?

A. His first experiments were made in bottles in a water bath;

afterwards by placing casks containing the wine in heated water baths, larger quantities. He himself had very little to do with the application of his theory; other wise men and inventors took it up.

Q. 6. Pasteur never did apply the heat in any such way as
478 that described in the complainant's patent, by introducing the heat into the cask or barrel, did he?

A. Pasteur certainly never did; I don't know what the inventors following his theory did. There were a great many different machines got up and patented in Europe—over eighty, I think, between 1865 and the present time.

Q. 7. You use the expression here "to cook the wine." Was that any part of the Searle process?

A. Yes, sir; I think that was the Searle process.

By Mr. BOONE:

Q. 8. Mr Curtis, you are familiar with Pasteur's process, are you?

A. Yes, sir.

Q. 9. Who was Pasteur?

A. A French chemist, now living.

Q. 10. What was his theory; do you know?

A. That the application by heat to a temperature of seventy-five degrees centigrade would destroy any animal or vegetable matter existing in wine, destroying any ferments; render them inert.

Q. 11. Then his process was to be applied for the purpose
479 of arresting fermentation by destroying the fungus in the wine, was it?

A. That was the primary object.

Q. 12. That was his theory, was it not?

A. Yes, sir.

Q. 13. And that was his object in applying the heat to destroy them?

A. Primarily that was his object, but in his experiments he found that it fixed the color better and hastened the ageing of the wine. Since then, growing out of his theory and from experiments upon it, it has been found that very many other benefits accrued, such as the elimination of carbonic acid gas, which was one of the results of his theory which he did not perceive himself.

Q. 14. That result is something that you have obtained by your experiments, is it?

A. It has been obtained in Europe, also.

Q. 15. You have obtained it also, have you?

A. Yes, sir; the machines made to-day permit the escape
480 of the carbonic acid gas.

Q. 16. That is a discovery made since the discovery of Pasteur's process?

A. That is one of the results of heating not known in 1865.

Re-examination of JAMES M. CURTIS by Mr. SCRIVNER:

Q. 1. Mr. Curtis, I understood from your testimony awhile ago that you are familiar with the process described in the complainant's patent, the Searle process?

A. Yes, sir.

Q. 2. You are familiar with the usual processes of curing wine and heating wines, are you not?

A. Yes, sir.

Q. 3. You have been engaged in that business, you say, since 1866?

A. Since 1867.

Q. 4. Now, what do you understand to be the meaning of his expression "ageing wines?"

A. The term is used by wine and liquor merchants commonly for anything that produces mellowness and softness of the wine
481 or liquor; as, for instance, there are various methods of softening whiskies and brandies which are technically termed ageing. Correctly speaking, they do not produce the effect of age, but resemble the effects so far as the softness to the taste is concerned.

Q. 5. You have worked at this Searle process considerably yourself?

A. In conjunction with Mr. Searle; yes, sir.

Q. 6. And you are entirely familiar with the effects of the introduction of heat by means of steam through these metallic pipes, as described in the complainant's patent, are you?

A. Yes, sir; I have had several years' experience.

Q. 7. You are familiar with it by reason of your working with Mr. Searle in the business, are you?

A. Yes, sir.

Q. 8. From the actual application of it?

A. Yes, sir.

Q. 9. Now, I will ask you, Mr. Curtis, if, in your judgment, the introduction of heat into the wines, as described in the com-
482 plainant's patent and as claimed in it, has the effect to shorten the time that was formerly required for ripening wines and liquors to about one-half the ordinary period without deteriorating their flavor?

A. The only economy of time is the economy gained in first raising the temperature up to the required point, say, one hundred and thirty degrees. By this Searle process it can be done, if needed, very quickly, of course. By the processes of heating in vaults or in heated rooms, where the wine is contained in larger or smaller casks, a greater time is required to obtain the temperature of one hundred and thirty degrees.

Q. 10. That is not the question. The complainant states that "the nature of my invention consists in providing a process for shortening the time that is now required for ripening wines and liquors." Now, then, after the requisite amount of heat is obtained, does this Searle process shorten the time that was required for ripening wine?

483 A. No, sir.

Q. 11. Under the old processes of ripening wine do you know what the sizes of the casks used were—that is to say, is there any difference in the size of the casks used then and those used under the Searle process?

A. Under the Searle process the wine is heated in one or more

large tanks. The casks that Mr. Searle used in the latter years of his life were casks of about eight thousand gallons' capacity, in each one of which was a coil—not a coil, but a pipe with an elbow at right angles. Under what is known as the baking process in heated rooms wine was heated by Pettinelli here in this city in about 1865. He heated in small casks a great deal of the wine in barrels. In the island of Madeira, where this process of heating wine originated, it is usually heated in pots of about one hundred and eight gallons.

Q. 12. What sized casks did Mr. Searle use in the earlier
484 part of his experiment or soon after the date of this patent, Exhibit A?

A. One of fifteen hundred and one of eighteen hundred gallons.

Q. 13. When did he first commence using that cask of eight thousand gallons?

A. In 1877.

Q. 14. Those fifteen-hundred and eighteen-hundred gallon casks were the first that he used, were they?

A. The first that I had any knowledge of.

Q. 15. Were you with him at the time he built his eight-thousand gallon casks?

A. Yes, sir.

Q. 16. Were you with him when he discovered that he could operate with an eight-thousand gallon cask?

A. He could operate with a cask of any size on that principle. If he could operate with a cask of one thousand gallons he could operate with a cask of one hundred thousand gallons. There would be no discovery about that.

Q. 17. He knew all the time that he could operate his pro-
485 cess with an eight-thousand gallon cask?

A. Oh, yes, sir.

Q. 18. Could wine be cured or ripened under the ageing process in a large tank that you know of, or do you know anything about that?

A. In the old process it is unquestionably better to use small casks, because the area, the surface exposed to the temperature, is greater in proportion to the contact.

Q. 19. I see it stated here in the patent Exhibit A that "By this process there is a great saving of time and fuel." Do you know of any saving of fuel by the Searle process?

A. I think there is an economy of heat.

Q. 20. Fuel?

A. Yes, sir.

Q. 21. But no economy of time?

A. Except in first getting up the desired temperature. In heating a large vault there is time wasted in heating that is not wasted in this Searle process.

486 Q. 22. In the old process the process of ripening didn't commence until a certain temperature of heat was reached, but after that temperature was reached it took as long to cure it under the Searle process as under the old process.

A. The effect of the heat is the same in both instances.

Q. 23. I see it also stated in the patent as follows: "There is no injury to the casks, whereas by the old system they become damaged and require constant repairs." What is your judgment as to that?

A. By the old system small casks being used had not the strength which is required for the purpose of heating by indirect steam. The casks put up by Mr. Searle, those eight-thousand gallon casks, were made of three-inch oak, very heavy, very solid, very heavily ironed, and of course would last a very long time.

Q. 24. And would cost a great deal more?

A. And would cost a great deal more; yes, sir.

Q. 25. If they had made the small casks of the same
487 strength they would have lasted about as long, would they?

A. They would have lasted just as long. Parties who are now baking in ovens are using the same casks year after year, some of them at least.

Q. 26. What do you understand to be the injury to the casks referred to in the patent? How are the casks damaged by reason of wine being in them when the old process is used?

A. The high temperature would affect a weak cask more than a strong cask.

Q. 27. What I want to get at is what is the effect.

A. Casks of equal size would probably be about equally affected by the two processes.

Q. 28. What was the injury to the casks themselves?

A. Shrinking of the wood within the hoops. These large casks of three-inch oak shrank so that within the first three months of
their use the hoops had to be driven down three or four
488 times, and some of the hoops taken off and cut shorter to put on again.

Q. 29. I see it also stated in the patent: "6th. No bad taste is imparted to the liquors during my process, which is too often the case in the Estufas."

A. A bad taste is likely to come from the wood if unseasoned or immature casks are used. Casks, whether used with steam heating or heating in ovens, if they contain a bad or musty taste, they are certainly as likely to impart it to the wine in the one case as in the other.

Q. 30. Then there is no difference in that regard, is there, between the use of the Searle process and the use of the old process?

A. Not, supposing the casks to be equal.

Q. 31. Wines have been ripened under this old process for a great many years, have they not?

A. Wines have been ripened by heat ever since history commenced. They were ripened by the ancient Greeks and Romans by heat.

489 Q. 32. There is nothing new in the complainant's patent, then, so far as ripening wines by heat is concerned?

A. Nothing new whatever.

Q. 33. Now, I see it also stated in complainant's patent as follows: "The degrees of heat which are used in the operation varies from one hundred to one hundred and forty degrees. The time re-

quired to perfect the operation of ripening wine by this process is about six weeks." What is your experience in that regard while operating with this patented process?

A. We turned out some wine in from sixty to seventy days, but most lots required ninety days, and some one hundred and twenty.

Q. 34. Did you ever ripen any in six weeks?

A. No, sir.

Q. 35. Can it be done successfully and practically?

A. I think not. I have never seen any wine that would be sufficiently ripened in six weeks.

Q. 36. Did you or Mr. Searle, while operating together, ever
490 cure or ripen any within six weeks?

A. No, sir.

Q. 37. What was the time required under the old system for ripening wines—that is, after you had acquired the necessary temperature?

A. The usual time employed is about three months; but there is one point of difference between the heating by indirect steam and heating in a vault. Some difference of flavor is produced, and a greater degree of perfection can be obtained in a baking room than by a steam heating. By steam heating, after a certain length of time, no better flavor can be derived; but in a heating room the wine, after arriving at a certain stage, will improve still further with the continuation of the heat. It is sometimes continued two years.

By Mr. BOONE:

Q. 38. That is, in the old process?

A. Yes; in Maderia; but as a general thing it is not continued over four months.

By Mr. SCRIVNER:

Q. 39. But among manufacturers of wine under the old
491 process it was considered to be ripened within ninety to one hundred days from the time the necessary temperature has been acquired, was it?

A. That is my information from books.

Q. 40. That is your experience, is it not?

A. So far as the heating of wine is concerned, there are a great many places in California where wines are heated in hot rooms, and about four months is the usual time employed by them.

Recross-examination of JAMES M. CURTIS by Mr. BOONE:

Q. 1. Did you ever practice ripening wine by the old process?

A. No, sir.

Q. 2. Then what you have testified in relation to that is simple what you have obtained from books, is it; information obtained by reading about it?

A. Well, I have had some business connections with people who have been employed in using the old process.

492 Q. 3. But you have not personally attended to it in any way yourself?

A. No, sir.

Q. 4. And all you know about it is what you have heard from others and learned from books?

A. Yes, sir.

Q. 5. What actual connection have you had with the Searle process?

A. In 1868 the firm of E. D. Wilson & Company, afterwards the Lake Vineyard Wine Company, of which I was manager, made an arrangement with Mr. Searle for the making of sherry by his process. We made a number of lots and shipped them to New York. In 1869 I went to New York myself to superintend the business there, and had no direct connection with Mr. Searle until my return, two years afterwards. In 1872 I resumed it again. I was at that time in business for myself at 434 Jackson street, in this city. I furnished wines to Mr. Searle and he heated them, and then I took the wines and sold them.

493 Q. 6. What actual connection did you have with the ageing or ripening of the wines? Did you manipulate it yourself?

A. No, sir; Mr. Searle manipulated it.

Q. 7. Did you ever manipulate or treat wines yourself by Mr. Searle's process?

A. No.

Q. 8. Then all you know is what you have learned from Mr. Searle or from hearsay, is it?

A. Mr. Searle and myself studied up the theory and practice of sherry making together a great deal My suggestions as to the manner of treating wine were of-en followed.

Q. 9. I am speaking of the actual work of treating the wine.

A. I never put my own hand to it at all.

Q. 10. Were you in the room where it was done, and did you watch its operation and the process as carried out?

A. I saw its operation when the works were erected at 434 Jackson street. Frequently before that I went out to the place where he had his works erected, on McAllister street.

494 Q. 11. You were simply an occasional visitor, were you?

A. Yes, sir.

Q. 12. You didn't watch it or study it during its operation?

A. I tested the wines; he generally brought them in once a week.

Q. 13. Brought them into your office?

A. Yes, sir; there was no occasion for any further connection with it. It is purely a question of keeping the temperature up to a certain number of degrees Fahrenheit; and, concerning that—the time of heating and the time of cooling—we sometimes cooled it down during the process, experimenting on that—the experiments on that and also experiments in starting the heat in the first place. We experimented on that, raising it directly up to one hundred and thirty degrees, and we experimented by raising it first to seventy or seventy-five degrees, and then, on any suggestion, to ninety-five degrees, and there stopping it for awhile, and then gradually raised it

up to one hundred and thirty degrees, which is, I think,
495 the way it is done now.

Q. 14. But these experiments were all made by Mr. Searle, were they not?

A. The men were in his employ who did the work, but the suggestions on the theory of the subject came mostly from me.

By Mr. SCRIVNER:

Q. 15. When was that?

A. That was more particularly after 1872.

By Mr. BOONE:

Q. 16. These suggestions were made in common conversation between you and him, were they?

A. Yes, sir.

Q. 17. He was at work at the time, was he, testing to find the proper temperature for treating the wines?

A. To see what was the best course.

Q. 18. And you would suggest different temperatures, and he would go and test them, would he?

A. It was a matter of mutual suggestion.

Q. 19. How long after the casks were filled and heat applied before the wine was ripened, not taking in consideration the firing and racking of the wine?

496 A. We considered that we were able to make three heatings a year with the same apparatus.

Q. 20. Have you not known that operation, the process of ageing, exclusive of the time that I have mentioned, to be accomplished by Mr. Searle's process inside of six weeks?

A. I think not, sir.

Q. 21. You think not?

A. I think not.

Q. 22. You don't know all the experiments that he did carry on, do you?

A. No.

Q. 23. How far does your knowledge in that respect go?

A. I suppose that nineteen-twentieths, perhaps, of all the sherry wine that he made up to the time of our dissolution, in 1868, was made in connection with me. The first lot that he ever made he sold to Kohler & Frohling. That lot I didn't see at all except samples of after the sale. The second lot was wine that he bought from Dalton, near Los Angeles, and was a failure; turned out bad; and I was erecting some vinegar works at that time and bought it
497 for the purpose of making vinegar, and found that I could not make it into vinegar on account of the chemical changes that had been produced in the wine by heating. Then, after that, we furnished the wine for him to make most all of the wine that he made; occasionally he made a tank or two tanks for somebody else, as he did for Dreyfus & Company, in 1877 or 1878. He made some for other people, but the greater part of the wine was made in conjunction with me.

Q. 24. Now, you say that, by the old process, wine was contained in small casks containing about one hundred and fifty gallons; is that as I understood you?

A. Smaller casks than that were generally used.

Q. 25. About how much did they contain?

A. From information derived from books, the casks generally used in Madeira were about the size of the casks used for Spanish sherry, containing about one hundred and eight gallons, and gener-
498 ally it was found convenient to heat it in smaller casks.

Q. 26. You say it took how long by that old process?

A. Wine is frequently kept subjected to the process two years, but that is for the purpose of developing a finer quality of wine. It is done at a very much greater cost on account of the evaporation. The common time for commercial purposes is about four months.

Q. 27. The larger the casks the longer it will take to treat the wine by the old process?

A. Yes, sir.

Q. 28. How long would it take by the old process to treat eight thousand gallons of wine placed in one cask?

A. I don't know; I suppose that would be a matter of mathematical calculation; it could be calculated. The conducting power of the cask would be an important factor in the calculation, the thickness of the cask, and so forth.

Q. 29. Do you know whether wine has ever been treated
499 in large casks of that kind by the old process?

A. I have never heard of it.

Q. 30. In your opinion, would it be practicable?

A. I think not.

Q. 31. Would it not be a great deal cheaper to treat wine in one large cask than in smaller casks? Would it not be cheaper to treat eight thousand gallons of wine in one large cask than it would be to treat it in the several smaller casks, which that amount would require by the old process?

A. Yes, sir; the cost of the casks would be less.

Q. 32. How is it about the waste of wine in handling; wouldn't there be a larger amount of waste when there were a larger number of casks?

A. If the casks were of inferior construction, thinner; yes, sir. There would be a larger waste, because there would be a larger evaporating surface.

Q. 33. There is always a certain amount of waste by any process?

A. Yes, sir.

500 Q. 34. Not only by reason of evaporation, but also by handling and racking wine?

A. It is supposed by many, and I myself am of the opinion, that the evaporation is actually no loss; that it enhances generally the quality of the wine.

Q. 35. It reduces the quantity, does it not?

A. Yes, sir.

Q. 36. Do you know what the waste by the old Estufas process was?

A. No; not from personal experience.

Q. 37. You have not studied that part of it?

A. That, I could readily see, would depend on the quality of the casks used; if they were old and rotten casks it would be very great.

Q. 38. You said the wine is affected by the taste of the wood, did you not?

A. If the wood is not thoroughly free from any bad taste the taste will be acquired by the wine readily.

Q. 39. Would eight thousand gallons of wine contained in one cask be apt to acquire as much taste from the wood as that
501 amount of wine placed in one or two hundred small casks, as by the old process?

A. If neither of them were cleaned prior to using, the wine would be spoiled in either case.

Q. 40. In which case would the wine be most influenced by coming in contact with the wood?

A. In the smaller casks.

Q. 41. Then, in that view, would not the wine treated by the old process be more likely to take the taste of the wood than wine treated by the new process, where there was a smaller area of casks to which the wine was exposed?

A. The wine would be spoiled in either case, unless the cask was thoroughly cleaned.

Q. 42. In which case would the wine be more likely to get the taste of the wood?

A. The wine would be exposed to a larger area in the small casks, of course.

Q. 43. Then, would it not be more likely to take the taste of the wood in the smaller casks?

502 Ans. Yes; but suppose the staves to be three-quarters of an inch thick, the usual thickness of the staves, it would be thoroughly permeated by the wine before the heating process is done; the wine would reach every part of it; and so it will if three-inch staves are used. You have got to clean a cask made of three-inch staves just the same as you have to clean a cask made of half-inch staves.

Q. 44. But that wine once in the cask it remains there until the end of the treatment?

A. The wood of the cask must be free from tannin before the wine was put in or the heat will develop it in either case very largely.

Q. 45. But after the wine has been put in the casks and the staves have become saturated the wine remains there until it is thoroughly treated?

A. Yes, sir.

Q. 46. It has no effect upon the wine inside of the cask, but only on that which is taken up by the staves?

503 A. Certainly it has. Suppose the wood contains a taste of tannin or nut-gall, the wine reaching that would impart it to the surrounding wine, and the taste would not be any stronger an inch from the staves than it would be in the center of the cask.

By Mr. DICKINSON:

Q. 47. There would be more wine absorbed by the many small casks than by the one large cask if they were built out of the same material?

A. Yes, sir; there would be more area exposed.

By Mr. BOONE:

Q. 48. In the old process the heat penetrated through every part of the cask, did it not, towards the wine?

A. Yes, sir.

Q. 49. Would not that have a tendency to give a taste to the wine?

A. Any more than heating inside the cask containing the wine?

Q. 50. Yes; the heating moving outwardly.

A. I judge not.

Q. 51. Do you know anything about it?

A. Well, perhaps as much as anybody does know about
504 that. It is a speculative question. It is not a question probably that has ever been practically experimented upon.

Q. 52. Would not the wood be cooked more if the heat was applied on the outside than if it was applied on the inside and went to the wood through the medium of the wine?

A. If the wine inside of the cask were, say, at a temperature of one hundred and thirty degrees, derived from external heat, I presume the surface of the staves—the outside surface—might be something more than one hundred and thirty—might be one hundred and thirty-two or three—by the slow application of heat. It could hardly be more than that, for the wine-room is not heated to any higher temperature than you want to heat the wine. There certainly could not be more than one or two degrees difference between the inside and the outside of the cask in the warm room except when the heat is first being applied; then the difference would be greater; but for the time that the wine itself is heated the
505 external heat of the cask would not vary more than two degrees, I should imagine, from the exterior heat.

Q. 53. Then the outside of the cask, when the heat was applied inside, would be cooler than the wine?

A. Yes, sir.

Q. 54. While by the old process on the outside of the cask the heat would be greater than the heat of the wine?

A. By heating by indirect steam the wine is heated before the surrounding atmosphere, of course; but long before the wine is heated the surrounding atmosphere is so hot that it is unendurable for you to go into the room. They always keep the room closed so as to economize heat—to have the external atmosphere nearly as hot as the wine itself; so that in that case, during the greater part of the time, the external heat of the cask would be very nearly as great as the internal heat, and the difference of two or three degrees amounts to nothing.

Q. 55. In your opinion, and from your knowledge of the
506 two processes—that is, the process in use prior to 1865 and the Searle process—which is the more economical?

A. I think that the Searle process is the more economical.

Q. 56. You think it has several advantages over what had been done before?

A. Yes, sir; I think the application of heat in the interior of a cask is better than to apply it externally.

Re-examination of JAMES M. CURTIS by Mr. SCRIVNER:

Q. 1. During your experiments in connection with Mr. Searle in the year 1872 and subsequent to that time what was the result, as regards the amount of heat that was required?

A. We heated commonly the greater part of the time to one hundred and thirty to one hundred and thirty-five degrees Fahrenheit.

Q. 2. What was the object of those experiments that you *speak* of just now in answer to Mr. Boone's question?

507 A. To discover the effect upon the character of the wine treated, to find out which was the better way.

Q. 3. To find out what degree of heat was the best?

A. Yes; and what application of it was the best; to find whether a continuous or broken application of heat was best.

Q. 4. And you commenced with about what degree of temperature?

A. In the latter stages of it we first ran up the wine to about seventy to seventy-three degrees and let it rest there to see if any fermentation would set up; if it did, we would let that fermentation go on, let it finish or go as far as we wanted it to go, and then we would raise the heat to a temperature of ninety-five degrees Fahrenheit and stop it, and then slowly raise it until it was up to one hundred and thirty to one hundred and thirty-five. That was only an experiment. Commonly the temperature was raised from the normal temperature of about sixty-five degrees up to one hun-

508 dred and thirty to one hundred and thirty-five.

Q. 5. Do you know whether at that time Mr. Searle knew what the correct temperature should be in order to successfully ripen this wine under his process?

A. Nothing more than practice in Portugal and in Madeira, where generally it was heated up to about one hundred and thirty and one hundred and thirty-five degrees.

Q. 6. You are satisfied, are you, that he did not know by experiments made by himself?

A. (Interrupting.) He didn't know from any original discovery.

Q. 7. He didn't know from any original discovery prior to 1872 what degree of heat was necessary to be applied by means of this process in order to make it practically successful?

A. I don't think that he did.

Q. 8. Don't you know whether he did or not from your experiments with him subsequent to 1872? Don't you know that he didn't know what was the degree of heat to apply to make it practically successful?

509 A. I am very sure that he knew nothing further than the experience of others that had gone before him with the old process.

Q. 9. At that time he knew nothing of the means of securing the desired results in the manner described in his patent?

A. I don't think he did, sir.

Q. 10. That was demonstrated by experiments made by you and himself subsequent to 1872?

A. We experimented a great deal on various temperatures to gain experience on that subject.

Q. 11. The object of those experiments was to determine the degree of heat that was necessary to be applied inside of the casks?

A. Yes, sir.

Q. 12. And by means of those experiments you did demonstrate what was the necessary temperature to apply to the wine?

A. We gained some information on the point. Whether it is fully demonstrated now I doubt very much. If I was in a position to do so I should continue those experiments.

510 Q. 13. You did demonstrate by those experiments what degree of temperature would make salable wine by this process, did you?

A. That is rather a hard question to answer. I don't think that it is fully demonstrated yet.

Q. 14. You made salable wines by that process, did you not?

A. Yes, sir.

Q. 15. And you demonstrated by those experiments that a certain degree of heat would make those wines, did you not—that is, you found out that if you would apply heat to a certain degree——

A. (Interrupting.) We were very well satisfied that no higher temperature than one hundred and thirty degrees was necessary.

Q. 16. How did you find that out?

A. By experiment.

Q. 17. By these experiments made subsequent to 1872?

A. Yes, sir; the experiments made in conjunction with me were made almost wholly subsequent to 1872.

511 Recross-examination of JAMES M. CURTIS by Mr. BOONE:

Q. 1. Mr. Searle had no doubt about the economy and value of his process, had he, while you were making these experiments with him?

A. He thought that it was a better process than heating in vaults, and so did I.

Q. 2. He did not experiment to test that fact, did he?

A. No. Our experiments were directed solely to attaining success in the treatment of wines, and the great obstacle in the way of that was to learn just the quality of wine that would bear the treatment and the method of treating different wines. One wine we could make into the so-called sherry very much more quickly than we could another by treating it in the same way. Some wines we would turn out in ninety days and others would take half as long again.

512 Q. 3. Then his experiments were intended to ascertain what and how many benefits he could derive from the use of his new process, were they not?

A. Unquestionably.

Q. 4. When did you commence to experiment with Mr. Searle?

A. In 1872.

Q. 5. How high did you carry the temperature in your first experiments?

A. I don't remember the details of the experiments, but generally the heat was reduced, I think. I think the temperature of our first experiments was about ten degrees higher than that of our last, and more continuous, and the heat was kept up a longer time.

Q. 6. You stated awhile ago that in your experiments in 1872 with Mr. Searle you heated the wine to one hundred and thirty to one hundred and thirty-five degrees Fahrenheit?

A. That was the close of our experiments; that was the result that we arrived at. What the detail of this was I can't remember, but I am certain that our first heatings were at a higher tem-
513 perature than we got towards the last.

Q. 7. Do you recollect what the temperature of the first heating was?

A. My impression is from one hundred and forty to one hundred and forty-five.

Q. 8. What temperature did they carry the old process to?

A. The temperature necessarily varies a good deal, because it is difficult to keep a uniform temperature, but about one hundred and thirty-five to one hundred and forty degrees is the temperature used in the old process.

Q. 9. Mr. Searle knew all about that, did he not, when you commenced to experiment in 1872?

A. I suppose he was posted. He had seen this work done a great deal in Portugal, as I understand, and was a well-informed man and knew something of the origin of this old process of heating sherries in the Island of Madeira.

Q. 10. Then the result of his experiments was to convince him, and yourself also, that by his process you could treat wine at
514 a temperature five or ten degrees lower than you could by the old process, was it?

A. We found that one hundred and thirty to one hundred and thirty-five was quite as beneficial to the wine as one hundred and forty to one hundred and forty-five, and was attended by less evaporation.

Q. 11. One hundred and forty to one hundred and forty-five degrees by the old process, do you mean?

A. No; by the same process.

Q. 12. Did you ever try the same experiments with the old process?

A. I have not tried any experiments with the old process. Our experiments were all relative to each other by this process.

Q. 13. And by the old process they treated wine at a temperature of one hundred and forty degrees?

A. My impression is, one hundred and forty to one hundred and forty-five.

Q. 14. And by Mr. Searle's process you got all the beneficial effects that you wanted at one hundred and thirty-five degrees as a maximum?

515 A. I think now that so high a temperature as that is not necessary.

Q. 15. You think a less degree of heat than that is sufficient by the Searle process?

A. By any process.

Q. 16. How do you know it is sufficient by the old process? You have not experimented by the old process?

A. No, sir.

Re-examination of JAMES M. CURTIS by Mr. SCRIVNER:

Q. 1. Under this Searle process could good, salable wine be made with a temperature of one hundred degrees?

A. No; it wouldn't do any good at all to heat the wines to only one hundred degrees.

Q. 2. Could good, salable wine be made with the heat at a temperature of one hundred and forty degrees?

A. We made wine at one hundred and forty degrees that was very good.

516 Q. 3. And you think that was too much?

A. I think it don't injure the wine, but that it is unnecessary.

Q. 4. Now, then, in your judgment, could a person skilled in the art take the specification of this patent, Exhibit A, and know what degree of heat should be applied to the wine in the cask to make good, salable wine?

A. No. Any person taking that patent and going to work would probably spoil nine gallons out of ten.

Q. 5. Then the specification of the patent is insufficient to inform any one how to make the wine under this process?

A. It certainly would not enable anybody ignorant of the process to make it.

Q. 6. Could any person of ordinary intelligence and ordinary skill in the manufacture of wines at the date of this patent, in 1865, take the patent and the specifications contained in it and, from the information therein contained and therein given, make wine

517 successfully—good, salable wine?

A. No. We made many failures for many years. Mr. Searle's second experiment, the one where I bought the wine for vin-gar purposes, was a total failure.

Q. 7. When was that?

A. That must have been made in 1867. It was in the winter of 1867–'68; I think it was in November or December, 1867, I bought that lot of him.

Q. 8. And after you and he commenced your experiments in 1872 you made many failures?

A. Yes, sir; I refer you to a notable failure we made in 1869 with a lot of wine that we shipped to New York that was sold for fifteen cents a gallon after it got there.

Recross-examination of JAMES M. CURTIS by Mr. BOONE:

Q. 1. You could take the patent Exhibit A, could you not, Mr. Curtis, and make a successful manufacture of wine by following the description contained in it?

518 A. Yes, sir; not by following the patent, but by following the knowledge that I have obtained by experience, for this (the patent Exhibit A) gives you no knowledge.

Q. 2. But you say you have never had experience in treating wine practically.

A. In the same way you may say I have had no experience in handling casks. I don't make them with my own hands; still, I know a good cask when I see it from a poor one. I have had a great deal of experience with casks, but I am not a cooper. I never made a cask.

Q. 3. Then you think that, from your own natural capacity, from your knowledge gained from being connected with this business, you could, by following the patent, make a success of the process as described?

A. I think that I could make a success of this process by following my experience—following my knowledge.

519 Q. 4. Could you not, with the knowledge that you had at the time that you were first connected with Mr. Searle, have placed the wine in large casks and placed a steam coil in the cask and applied the heat to the wine in the cask as described in the patent—could you not have done that successfully?

A. Yes; I think that I could have raised the temperature to any degree that I desired and kept it at that.

Q. 5. Then it was a mere question of temperature after that, was it not?

A. The first and most important question was the selection of material to work upon—stock to work upon. That is where experience comes in most.

Q. 6. The patent does not pretend to tell you what kind of stock to use, does it?

A. No; not much.

Q. 7. It leaves that to the knowledge of the workmen, does it not?

A. I don't know what the patent says about that.

Q. 8. Examine the patent, and see if it says anything about what kind of wine you have got to take or the character of the wine.

520 A. I will say this, that a person having knowledge of what wines were proper to heat by the old process, selecting such wines and heating them by this process as he would by the other, would probably make just as good a wine by this process as he would by the other process.

(Recalled, page 152.)

Deposition of James J. Searle.

Examination-in-chief of JAMES J. SEARLE on behalf of respondents by Mr. SCRIVNER:

Q. 1. Mr. Searle, I notice you testified on your former examination that Mr. De Turk was licensed to use this process?

A. No; I did not say he was licensed to; I said he was using it.

Q. 2. What was your testimony on that point?

A. I could not tell what the testimony was further than that he was using it.

Q. 3. Was he authorized to use it by you?

A. I sold him the tanks with the understanding that we
521 would not disturb him in the use of it.

Q. 4. Then he was authorized to use it, was he not?

A. He was authorized so far as I could authorize him. I had no authority to authorize him.

Q. 5. You were your mother's agent, were you not?

A. Yes, sir.

Q. 6. Did your mother ratify your action in that regard?

A. I don't think she knows of it. The tanks were mine at the time, and I sold them to Mr. De Turk and told him that if he used them I should not personally interfere with him.

Q. 7. How much did you charge him for them?

A. Six cents a gallon.

Q. 8. What profit was there in selling the tanks at six cents a gallon?

A. There was no profit. They were stored and going to decay, and I sold them to save the tanks. They did not belong to the estate when I sold them. They had belonged to the estate.
522 They had been sold at auction.

Q. 9. Have you ever authorized any one else to use the process?

A. No.

Q. 10. During the lifetime of that patent was the process described in it being used to any considerable extent?

A. By my father, do you mean?

Q. 11. No; by other people.

A. Before the patent expired the only party I know of my own knowledge using it was B. Dreyfus & Company, the defendants.

By Mr. FREIDENRICH:

Q. 12. Do you know whether Groezinger used it?

A. The first time that I ever heard of it was from the testimony to-day. It was intimated that he was using it.

Q. 13. Don't you know that he has been using it since 1875?

A. No; I do not.

By Mr. DICKINSON:

Q. 14. After your father's death you finished the treatment of what wine was in process of manufacture, did you?

A. Yes, sir.

523 Q. 15. Did you take any new lot at all?

A. I took one new lot.

Q. 16. As soon as that was finished——

A. Then the tanks were taken down and stored, then sold at public auction as the property of the estate, and then I afterwards bought them.

By Mr. BOONE:

Q. 17. What were these casks worth, as a matter of fact, Mr. Searle?

A. They cost about eleven cents a gallon, set up. I gather that from the bills.

Q. 18. What were they worth at that time? What could you have obtained for them from another person who would want them?

A. That I could not tell. I know they would have cost me eleven cents a gallon.

Q. 19. And you sold them for six cents?

A. I sold them for six cents a gallon.

(Continued, by consent of counsel, until Friday, 24th in-
524 stant, at two o'clock p. m.)

FRIDAY, *November* 24, 1882.

Present: Mr. Dickinson, solicitor for complainant; Mr. Freidenrich, solicitor, and Mr. Scrivner, of counsel, for respondent.

Deposition of James M. Curtis.

Re-examination of JAMES M. CURTIS on behalf of respondents by Mr. SCRIVNER:

Q. 1. Mr. Curtis, does the application of the heat to the wine itself as described in the complainant's patent have any effect upon the wine different from the effect of the heat as applied by the old processes?

A. In my opinion, no.

Q. 2. Is there any chemical or other change produced in the wine itself when heated by the complainant's patented process that is not also produced by the old processes?

A. No.

525 Q. 3. The chemical action or effect of the heat upon the wine *to* the same when applied by any and all of the known process-, *it is* not?

A. All processes of long heating, yes; not of instantaneous heating.

(Stip'n. It is stipulated by respondent- that complainant may interpose objections upon any and all grounds to any portion of the testimony of respondents' witnesses, said objections to be of the same force and effect as if made at the time the question eliciting such testimony were respectively asked.)

(Continued, by consent, until Tuesday, 28th instant, at two o'clock p. m.)

TUESDAY, *November* 28, 1882.

Present: Mr. Dickinson, solicitor, and Mr. Boone, of counsel, for complainant.

On account of the illness and absens- of respondents' solicitor, further continued until Friday, December 1st, 10 o'clock *p.* m.

526 FRIDAY, *December* 1, 1882.

Present: Mr. Dickinson, solicitor for complainant, — Mr. Boone, of counsel; Mr. Freidenrich, solicitor for respondents.

Re-examination of JAMES M. CURTIS on behalf of complainant by Mr. DICKINSON:

Q. 1. Is that your signature to the paper (Exhibit D) now shown you?

A. That is my signature.

Q. 2. Do you know the signature of John Searle, deceased?

A. Yes, sir.

Q. 3. Is that his signature upon the same paper?

A. Yes, sir.

Q. 4. Were you present during the examination of James J. Searle?

A. Yes, sir.

Q. 5. Is the paper referred to the contract spoken of by him?

A. If he referred to a contract between John Searle, Mr. De
527 Turk, and myself, this is the contract. This is an original contract between the parties named.

Deposition of James J. Searle.

Re-examination of JAMES J. SEARLE on behalf of complainant by Mr. DICKINSON:

Q. 1. Is the paper just referred to in the re-examination of Mr. Curtis the contract referred to by you in your testimony under which Mr. De Turk was to have wine treated by the Searle process?

A. Yes, sir.

(Ex. D. The paper referred to, being agreement, dated September 17, 1877, between John Searle and Isaac De Turk and James M. Curtis, is put in evidence by complainant and marked "Complainant's Exhibit D.")

(Obj. Pursuant to stipulation (page 153), complainant enters *his* objection to each of the questions propounded to the witness, James
528 M. Curtis, numbered, respectively, 8 to 44, both inclusive (page 71 to 76), and moves to strike out the testimony elicited by said questions on the ground that no notice has been given of the introduction of such testimony, and to all the questions propounded to said witness from Q. 45, page 76, to and including Q. 53, page 77, on the ground that use of an invention in a foreign country is not competent evidence.)

Stip'n. By agreement of counsel the reading of the above depositions to the witnesses and the signing thereof by them, respectively, are waived.

I certify that, previous to giving his deposition, each of the witnesses in the above record named was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the cause in the caption of this record entitled; that by agreement of counsel for the respective parties to said cause the depositions of said witnesses were taken down in short-hand and transcribed by S. C.
529 Houghton; that the reading of said depositions to the witnesses and the signing thereof by them, respectively, were by said counsel waived, and that I have retained the said depositions for the purpose of delivering the same with my own hand to the court for which they were taken.

I further certify that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

In witness whereof I have hereunto set my hand this 11 day of December, A. D. 1882.

JOS. F. O'BEIRNE,
Examiner, &c.

(Endorsed:) Filed 11th Dec., 1882. L. S. B. Sawyer, clerk, by J. F. O'Bierne, d'p'y cl'k.

530 COMPLAINANT'S EXHIBIT A.

Searle Patent.

SEARLE
v.
DREYFUS. } 2694.

No. 48728.

(Vignette.)

THE UNITED STATES OF AMERICA.

(Vignette.)

To all to whom these letters patent shall come:

Whereas John Searle, of San Francisco, California, has alleged that he has invented a new and useful improved process of imparting age to wines, which he states has not been known or used before his application; has made oath that he is a subject of Great Britain; that he does verily believe that he is the original and first inventor or discoverer of the said invention, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said invention, and praying that a patent may be granted for that purpose:

531 These *and*, therefore, to grant according to law to the said John Searle, his heirs, administrators, or assigns, for the term

of seventeen years from the fifteenth day of June, one thousand eight hundred and sixty-five, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention, a description whereof is given in the words of the said John Searle in the schedule hereunto annexed and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this eleventh day of July, in the year of our Lord one thousand eight hundred and sixty-five, and of the Independence of the United States of America the ninetieth.

[SEAL.]

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

D. P. HALLOWAY,
Commissioner of Patents.

532 *The Schedule Referred to in These Letters Patent and Making Part of the Same.*

To all whom it may concern:

Be it known that I, John Searle, of the city and county of San Francisco, State of California, have invented a new and improved process for imparting "age to wines and liquors;" and I do hereby declare that the within is a full and exact description of the same.

The nature of my invention consists in providing a process for shortening the time that is now required for ripening wines and liquors to about one-half the period, without deteriorating their flavor by the use of steam.

Madeira, sherry, port, teneriffe, and other wines have been prepared for many years for imparting age through the medium of "Estufas" or large ovens having flues by which they are heated. These "Estufas" are filled with wines and spirits in casks or pipes, and are kept at a proper heat until the contents of the casks show the desired age through the staves. By this process the heat
533 must necessarily be very great (say 140°), which impairs the flavor of the wine by imparting to it the taste of the cask, and oftentimes the casks have to be taken out and recoopered before the process can be completed.

By the use of my process the following advantages are derived:

1st. There is a great saving of time and fuel, the building and air not being heated within as by the old process.

2nd. It can be effected in casks of the largest size, thereby insuring uniformity of quality in the wine.

3rd. The process can be carried on in any storehouse or cellar.

4th. There is no injury to the casks, whereas by the old system they become damaged and require constant repairs.

5th. The breakage and loss on the liquors is very much reduced, which is sometimes excessive in the "Estufas" by the falling to pieces of the heated and dried-up casks.

6th. No bad taste is imparted to the liquors during my process, which is too often the case in the "Estufas," where the wine
534 receives the heat through the sides of the cask.

To enable others skilled in the art to make use of my improvement, I will proceed to describe my process and its operation. I use casks or tanks (as the case may be) for holding the wine; if casks they may be placed on end. Through each of these casks or tanks near the base I pass an iron or metallic pipe (copper is preferable) of about one inch and open at its end. These pipes connect with a main steam-pipe, and can be closed and the steam shut off should the heat become too great for the wine by means of a stop-cock attached to each of the pipes.

The degrees of heat which I use in the operation varies from 100 to 140°.

The time required to perfect the operation of ripening wine by this process is about six weeks, yet, of course, it will be left to the knowledge and discretion of the keeper of the cellar to determine when the ripening process is completed.

535 Having thus described my invention, what I claim and desire to secure by letters patent is the introducing the heat by steam or otherwise to the wine itself by means of metallic pipes or chambers passing through the casks or vessel, substantially as set forth.

JOHN SEARLE.

Witnesses:
C. W. M. SMITH.
H. S. HOMANS.

(Endorsed:) Filed 11 Dec'r, 1882. L. S. B. Sawyer, clerk.

(Here follow diagrams marked pp. 536 & 537.)

538 COMPLAINANT'S EXHIBIT D.

U. S. Circuit Court, Cal.

SEARLE
v.
DREYFUS. } 2694.

This indenture, made and entered into this seventeenth day of September, A. D. (1877) one thousand eight hundred and seventy-seven, by and between John Searle, of the city and county of San Francisco, State of California, party of the first part, and Isaac De Turk, of the township of Santa Rosa, Sonoma county, State aforesaid, party of the second part, and James M. Curtis, of the city and county of San Francisco, State aforesaid, party of the third part, witnesseth:

That for and in consideration of the undertaking hereinbelow mentioned of the said parties of the second and third parts the said John Searle, party of the first part, hereby covenants and agrees to and with the said parties of the second and third parts to erect,

at the premises known as No. 434 Jackson street, in the aforesaid city of San Francisco, good and substantial and well-cleaned vats, boiler, and other apparatus for the preparing of the wine
539 known as "Searle's sherry" by his patented process.

And the said John Searle further agrees to prepare for the said Isaac De Turk, party of the second part, at the aforesaid premises and by the aforesaid patented process and appliances, one hundred thousand gallons of the wine known as "Searle's sherry," to be uniform in flavor and quality and equal to the wine hitherto made by the said John Searle from wines similar to those hereinbelow agreed and undertaken to be delivered to the said John Searle by the said Isaac De Turk.

And the said John Searle covenants and agrees to complete the preparation of said one hundred thousand gallons of sherry within and during the period of one year next following the completion of his vats at the premises at No. 434 Jackson street aforesaid, and to deliver the same as it becomes prepared and ready for de-
540 livery to the said Isaac De Turk or his duly authorized agent on payment being well and truly made according to the undertaking of the said Isaac De Turk hereinbelow set forth.

And the said John Searle hereby agrees and covenants to and with the said Isaac De Turk and James M. Curtis, parties of the second and third part-, under a penalty of fifteen thousand dollars ($15,000) liquidated damages, that he will not, during the term of their indenture, prepare any such wine as that known as "Searle's sherry," nor give permission for the same to be made by any other person according to the process and with the appliances of his patent process aforesaid or in any other way, nor aid nor assist any other person or persons to make a similar wine, except such wine is made for and delivered to the said Isaac De Turk according to the terms of this agreement.

And the said Isaac De Turk, for and in consideration of
541 the aforesaid covenants agreed to by the said John Searle, hereby covenants and agrees to and with the said John Searle and James M. Curtis, parties of the first and third part-, to furnish and deliver at the aforesaid premises, No. 434 Jackson street, during the continuance of this contract, not less than one hundred thousand (100,000) gallons per annum of the best white wine of uniform quality, in good order and suitable in the judgment of the said John Searle and James M. Curtis for the production of "Searle's sherry," said wine to contain not less than seventeen per cent. of (absolute) alcoholic strength when delivered, the said wine to be delivered at such times and in such quantities as the said John Searle may demand on ten days' notice.

And the said Isaac De Turk further covenants and agrees to pay or cause to be paid to the said John Searle the sum of fifteen
542 (15) cents in U. S. gold coin for each and every gallon of "Searle's sherry" produced by the said Searle in accordance with the terms of this agreement, said payments to be made at or before the delivery of the said sherry.

And the said Isaac De Turk further agrees to furnish suitable

casks for and to accept delivery of the said sherry whenever the said Searle demands it and the sherry is complete and ready for delivery.

And further, all the parties hereto do mutually agree to and with one another that this indenture shall be in full force for the term of two years from the date hereof at the above-mentioned rate of fifteen cents per gallon.

And it is further agreed by all the parties hereto that should the said John Searle fail to perform all the covenants herein agreed *to* by him to be performed (the interference by the acts of God excepted) he shall pay or cause to be paid to the said Isaac De Turk a sum equal to any loss that he may sustain thereby, and that in case of
543 the failure of the said Isaac De Turk to do and perform all the covenants herein agreed by him to be performed he shall pay to the said John Searle all loss to him occasioned by such failure to perform the same, such loss to be calculated on the basis of the ability of the said Searle to prepare one hundred thousand gallons of sherry per annum at fifteen cents per gallon.

And it is further agreed that in case of the failure on the part of the said Isaac De Turk to comply with all his covenants herein expressed the said John Searle shall have the option of annulling this contract or of enforcing the penalty, as he may elect.

And the said James M. Curtis, party of the third part, for various and sundry valuable considerations, doth hereby guarantee to the said John Searle the full and complete performance by the said Isaac De Turk of all the covenants herein mentioned to be by him performed, hereby assuming equal responsibility with him,
544 the said De Turk, in the faithful performance of his contract and the penalty attached for non-performance thereof.

And it is further agreed by all the parties hereto that should a dispute arise at any time concerning this contract or any part thereof such dispute or misunderstanding shall be settled by arbitration.

In witness whereof the parties have hereunto set their hands and seals the date above written.

JOHN SEARLE. [SEAL.]
JAMES M. CURTIS. [SEAL.]
I. DE TURK. [SEAL.]

In presence of—
C. H. HINCHMAN.
GEORGE W. ELLIS.

(Endorsed:) Filed Dec'r 11, 1882. L. S. B. Sawyer, clerk.

545 At a stated term, to wit, the July term, A. D. 1884, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room in the city and county of San Francisco on Tuesday, the 19th day of August, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable Lorenzo Sawyer, circuit judge.

Order Allowing Appeal.

SOPHIA SEARLE, Executrix, &c., *et al.*
vs.
BENJAMIN DREYFUS *et al.* } No. 2694.

On motion of D. Friedenrich, Esq., solicitor for the defendants herein, it is ordered that an appeal from the decision rendered and the decree ordered to be filed and entered herein on the 18th day of August, A. D. 1884, being a day in the July term, A. D. 1884, of said circuit court of the United States, be, and the same hereby is, allowed, and that a certified transcript of the pleadings, depo-
546 sitions, evidence, stipulations, and proceedings be forthwith transmitted to the Supreme Court of the United States upon the appellants giving a bond in the sum of five thousand five hundred dollars.

547 *Bond on Appeal.*

United States Circuit Court, Ninth Circuit, District of California.

BENJAMIN DREYFUS, EMANUEL GOLDSTEIN, JACOB FROWENFELD, and JOHN J. WEGLEIN, Appellants,

vs.

SOPHIA SEARLE, as Executrix of the Last Will and Testament of John Searle, Deceased, Appellee.

Know all men by these presents that we, M. Ehrman and J. Baum, are held and firmly bound unto Sophia Searle, executrix of the last will and testament of John Searle, deceased, the above-named appellee, in the sum of five thousand five hundred dollars, lawful money of the United States of America, to be paid to the said Sophia Searle, executrix of the last will and testament of John Searle, deceased; to which payment, well and truly to be made, we
548 bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this twenty-sixth day of August, A. D. 1884.

The condition of this obligation is such that whereas the above-named Benjamin Dreyfus, Emanuel Goldstein, Jacob Frowenfeld, and John J. Weglein have taken an appeal to the Supreme Court of the United States to reverse the decree rendered and entered by the circuit court of the United States, of the ninth judicial circuit, in and for the district of California, in the cause entitled Sophia Searle, as executrix of the last will and testament of John Searle, deceased, against Benjamin Dreyfus, Emanuel Goldstein, Jacob Frowenfeld, and John J. Weglein (number 2694), which said decree was filed and entered of record in said circuit court of the United States on the twenty-second day of August, A. D. 1884:

549 Now, therefore, if the above-named Benjamin Dreyfus, Emanuel Goldstein, Jacob Frownfeld, and John J. Weglein

shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

M. EHRMAN.
J. BAUM.

Signed, sealed, and delivered in presence of—
L. S. B. SAWYER,
Com'r, &c.

UNITED STATES OF AMERICA, }
District of California, } *ss:*

M. Ehrman and J. Baum, being duly sworn, each for himself deposes and says that he is a householder and resident within said district of California, and that he is worth the sum of five thousand five hundred dollars exclusive of property exempt from execution and over and above all his just debts and liabilities.

M. EHRMAN.
J. BAUM.

550 Subscribed and sworn to before me this 26th day of August, A. D. 1884.

L. S. B. SAWYER,
Com'r U. S. Circuit Court, Dist. Cal.

(Endorsed:) The form of the within bond and the sufficiency of the sureties thereon are hereby approved. (Signed) Lorenzo Sawyer, U. S. circuit judge. Filed August 26, 1884. L. S. B. Sawyer, clerk.

551 UNITED STATES OF AMERICA, *ss:*

To Sophia Searle, as executrix of the last will and testament of John Searle, deceased, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington, in the District of Columbia, on the 13th day of October, A. D. 1884, pursuant to an order allowing an appeal from the final decree of the circuit court of the United States in and for the district of California, wherein Benjamin Dreyfus, a resident of Los Angeles county, California; Emanuel Goldstein and Jacob Frowenfeld, residents of San Francisco, California, and John J. Wegelin, a resident of New York, copartners doing business as B. Dreyfus & Co., are appellants and you are appellee, to show cause, if any there be, why the said decree in the said cause mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the circuit court of the United States for the district of California, this 26th day of August, A. D. 1844, and of the Independence of the United States the one hundred and ninth.

[The Seal of the Circuit Court, District of Cal'a.]

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

552 [Endorsed:] No. 2694. In the Supreme Court of the United States. Benjamin Dreyfus *et al.*, appellants, *vs.* Sophia Searle, as executrix, &c., appellee. Citation. Filed August 28, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

Service of a copy of the within citation is hereby acknowledged this 27 day of August, 1883.

JNO. H. DICKINSON,
Solicitor for Appellee.

553 In the Circuit Court of the United States of America for the District of California.

SOPHIA SEARLE, as Executrix, &c., *et al.*

vs.

BENJAMIN DREYFUS *et al.*

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify the foregoing five hundred fifty written pages (including two diagrams), numbered from 1 to 550, inclusive, to be a full, true, and correct copy of the record and of all proceedings in the above and therein entitled cause, and that the same together constitute the transcript on appeal to the Supreme Court of the United States in said cause.

Attest my hand and the seal of said circuit court this third day of October, A. D. 1884.

[The Seal of the Circuit Court, District of Cal'a.]

L. S. B. SAWYER, *Clerk.*

Endorsed on cover: California C. C. U. S. No. 118. Benjamin Dreyfus, Emanuel Goldstein, Jacob Frowenfeld, and John J. Wegelin, copartners doing business as B. Dreyfus & Co., appellants, *vs.* Sophia Searle, executrix of John Searle, deceased. Filed 17th October, 1884.

124-60

Supreme Court of the United States

OCTOBER TERM 1887.

No. 118.

B. DREYFUS et al. Co-partners as B. DREYFUS & CO., Appellants,

vs.

SOPHIA SEARLE, Executrix of JOHN SEARLE, Deceased, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

BRIEF FOR APPELLANTS.

J. HUBLEY ASHTON,
Of Counsel for Appellants.

Press of Thomas McGill & Co., Law Printers, Washington, D. C.

IN THE

Supreme Court of the United States.

October Term 1887.—No. 118.

BENJAMIN DREYFUS ET AL., COPARTNERS AS B. DREYFUS & CO., APPELLANTS,

vs.

SOPHIA SEARLE, EXECUTRIX OF JOHN SEARLE, DECEASED, APPELLEE.

Appeal from the Circuit Court of the United States for the District of California.

Brief for Appellants.

STATEMENT OF THE CASE.

This is an appeal from a decree of the Circuit Court of the United States for the District of California in a suit in equity, instituted by Sophia Searle, executrix of John Searle, deceased (appellee here), against Benjamin Dreyfus and others, copartners as Dreyfus & Co. (appellants here), to recover for an alleged infringement of letters-patent, numbered 48,728, granted July 11, 1865, to John Searle, for a "new and improved process for imparting age to wines and liquors." (Patent, Rec., p. 217.)

The patent was for the term of seventeen years from June 15, 1865, and it expired, therefore, June 15, 1882. The bill was filed December 21, 1881, alleging the death

of John Searle on May 12, 1879, the appointment of complainant as the executrix of his estate, and the grant of the patent; charging that the defendant had, since the death of Searle, infringed the patent; and praying an account of the defendants' profits, a decree for damages, and an injunction. (Bill, Rec., pp. 1–3.)

The answer was filed April 20, 1882, and an amended answer November 13, 1882. (Rec., pp. 5, 8.)

The defenses set up in the answer were—

1. A denial that John Searle was the original or first discoverer or inventor of an improved process for imparting age to wines, as alleged in the bill.

2. Prior knowledge and use of the invention by the several persons in this country and Europe named in the answer.

3. A denial that said process was a new or useful invention, and was not known or used by others before the alleged invention thereof by Searle, and at the time of his application for a patent had not been in public use.

4. A denial of any infringement of the said patent by the defendants.

5. The alleged invention described in the said patent was well known and in public use in San Francisco for more than two years prior to the date of Searle's application for a patent; and that the same was so known and publicly used in San Francisco by the several persons named in the amended answer. (Amended Answer, Rec., pp. 8–10.)

The replication, filed November 14, 1882, by stipulation, was applied to the amended answer. (Rec., p. 8.)

Proofs were taken before an examiner, which are in the Record. (See pages 152 to 221.)

The cause came on to be heard before Judge Sawyer, circuit judge, who on May 22, 1883, passed a decree in favor of complainant, sustaining the validity of the patent,

declaring an infringement thereof by the defendants, and for an account of the number of gallons of wine made, manufactured or treated by defendants by the process described in the patent, and the profits, gains, and advantages which defendants had received, or which had arisen or accrued to them, since May 12, 1879, from infringing the patent. (Interlocutory Decree, Rec., pp. 11, 12.)

No opinion in writing appears to have been delivered by the Court.

On May 18, 1884, the Master filed his report, finding that defendants had made or treated by the patented process since May 12, 1879, 48,000 gallons of wine, and that the profits, gains and advantages which had arisen and accrued to them were 6.77 cents per gallon upon or in respect to the said wine, amounting in the aggregate to the sum of $3,249.60. (Master's Report, Rec., p. 18, folio 46; p. 20, folio 50.)

The evidence before the Master accompanied and was made a part of his report. (Evidence before the Master, Rec., pages 20–146.)

Exceptions were filed by the defendants to the report. (Defendant's Exceptions, Rec., p. 146.)

The circuit judge overruled the exceptions and confirmed the Master's report. (Rec., p. 148.)

On August 22, 1884, the Court below rendered a final decree in favor of complainant and against the defendants, adjudging that the savings, profits, and advantages which accrued to the defendants by reason of the infringement of the patent amounted to the said sum of $3,249.60, and that the complainant recover from the defendants that amount, with interest from May 22, 1883, and costs of suit. (Final Decree, Rec., p. 150.)

The defendants have appealed from that decree.

Assignment of Errors.

I. The Court below erred in adjudging and decreeing that the letters patent, granted to John Searle, July 11,

1865, on which this suit was instituted, were good and valid in law, and that the said Searle was the first and original inventor of the alleged "improved process of imparting age to wines" therein described and claimed.

II. The Court below erred in adjudging and decreeing that the defendants had infringed upon the said letters patent and upon the alleged exclusive rights of the complainant under the same.

III. The Court below erred in adjudging and decreeing that the complainant recover of the defendants the profits, gains and advantages which had been made by them, or which had accrued to them, from the alleged infringement of the said letters patent, by the ageing of wines by the process described therein, and that an account be stated and reported by the Master of the profits, gains and advantages which had been so made or which had so accrued to the defendants as aforesaid.

IV. The Court below erred in not dismissing the bill upon the ground that the patent sued upon was null and void for want of patentable novelty and invention.

V. The Court below erred in adjudging and decreeing that profits, savings, and advantages, recoverable by the complainant in this suit, accrued to the defendants by reason of the alleged infringement of the said patent.

VI. The Court below should have adjudged and decreed, and erred in not adjudging and decreeing, that the defendants made and realized *no* profits, savings, or advantages whatever by reason of the alleged infringement of the said patent.

VII. The Court below erred in adjudging and decreeing that the profits, gains, and advantages which accrued to the defendants by using the so-called Searle process, were 6.77 cents per gallon upon or in respect to the 48,000 gal-

lons of wine cured by the said process, amounting in the aggregate to $3,249.60.

VIII. The Court below erred in adjudging and decreeing that the complainant was entitled to have and recover of the defendants in this suit for or on account of the alleged infringement of the said patent, the said sum of $3,249.60.

IX. The Court below erred in overruling the exceptions of the defendants to the Master's report, and in confirming the said report, and in adjudging any recovery to the complainant.

X. The Court below erred in rendering any decree in favor of the complainant in this suit.

ARGUMENT FOR APPELLANTS.

FIRST.

The Court below erred in sustaining the validity of the Patent sued upon, and in not dismissing the bill upon the ground that the Patent was void for want of patentable novelty and invention.

1. The Searle patent is found in the Record at *pages* 217, 218.

It is declared in the specification to be for "*a new and improved process for imparting age to wines and liquors.*" The invention is alleged to consist "in providing a process for shortening the time that is now required for ripening wines and liquors to about half the period, without deteriorating their quality, by the use of steam." The specification then states that "Madeira, sherry, port, teneriffe, and other wines have been prepared for many years for imparting age through the medium of '*Estufas*,' or large ovens having flues, by which they are heated. These '*Estufas*,' are filled with wines and spirits in casks or pipes, and are kept at a proper heat until the contents of the casks show

the desired age through the staves. By this process, the heat must necessarily be very great (say 140°), which impairs the flavor of the wine by imparting to it the taste of the cask, and oftentimes the casks have to be taken out and recoopered before the process can be completed," &c. The process and its operation are then described as follows: "I use casks or tanks (as the case may be) for holding the wine. Through each of these casks or tanks, near the base, I pass an iron or metallic pipe (copper is preferable), of about one inch and open at its end. These pipes connect with a main steam pipe, and can be closed and the steam shut off, should the heat become too great for the wine, by means of a stop-cock attached to each of the pipes. The degree of heat which I use in the operation *varies* from 100° to 140°. The time required to perfect the operation of ripening wine by this process is about six weeks, yet, of course, it will be left to the knowledge and discretion of the keeper of the cellar to determine when the ripening process is completed."

The claim is in the following words:

"What I claim and desire to secure by letters-patent is the introducing the heat by steam, or otherwise, to the wine itself by means of metallic pipes passing through the casks or vessel, substantially as set forth."

The patent is not for the chemical principle or scientific fact that wine may be ripened or "aged," as the phrase is, by the application of heat; for, as stated by the intelligent witness, Mr. Curtis (Rec., p. 201, fol. 488), "*wines have been ripened by heat ever since history commenced; they were ripened by the ancient Greeks and Romans by heat*," and the specification itself, on its face, states that heat had been employed for "many years" for "ageing" wine; nor is it for a method of ripening wine by exposing it to any precise degree of heat, or heating it for any precise length of time; nor is it for applying steam or other heat to the

wine by means of any peculiar form of apparatus or mechanical device; but it is, according to the claim, for introducing the heat by steam, or otherwise, to the wine to be acted upon, "by means of metallic pipes passing through the casks or vessel, substantially as set forth."

No drawing accompanied the specification for this patent.

A rough drawing, however, made by a son of the patentee, of one of the tanks used by his father for heating wine, was put in evidence (Rec. p. 155), and is complainant's *Exhibit B.* (Ib., fol. 526.)

This shows a horizontal steam pipe running into the tank or vessel containing the wine, and connecting outside with the boiler and inside with a perpendicular vent or exhaust pipe extending through the top of the tank.

The same person also made a rough drawing, supposed to be a representation of the apparatus used by the defendants, for the purpose of heating their wine, and which, it is alleged, infringed this patent. (Rec., p. 158; Complainant's Exhibit C, Ib., p. 537.)

The steam pipe inside the defendants' tank appears by this drawing to have been arranged in the form of a *worm* or *coil;* and the exhaust pipe, instead of coming out through the top of the tank, comes out almost alongside of the supply pipe. (Rec., p. 157.)

Henry Sanders, coppersmith, who made the coils, said, however, that they were not correctly represented in this drawing (Exhibit "C"); that they were not made so that they could be raised up, but were made to lay *flat* on the bottom of the tank, and that the outlet and inlet pipes were side by side, and not one above the other, as represented in the drawing Exhibit "C." (Rec., pp. 174, 175.)

2. It is obvious at once that there was nothing whatever new or patentable in the claim of this patent, which simply applied a method of heating liquids and other substances by means of steam, long used in the arts, to the particular sub-

ject, without any exercise of the inventive faculty, and without the development of any idea which can be deemed new or original in the sense of the patent law. In the language of Mr. Justice Swayne, in delivering the opinion of this Court in the leading case of *Brown* v. *Piper* (91 U. S., 41), "the thing was within the circle of what was well known before, and belonged to the public. No one could lawfully appropriate it to himself and exclude others from using it in any usual way for any purpose to which it might be desired to apply it."

(*a*) Mr. Knight, in his celebrated *Mechanical Dictionary*, (articles, "Heating Apparatus," and "Steam Heating Apparatus,") mentions that *steam-heating* was introduced by Watt in 1784, in the form of a hollow sheet-iron box, supplied with steam from the boiler of the establishment. Watt heated his study in this manner. Hoyle, in 1791, had a system of steam pipes. The steam ascended to the top of the building and passed downward. In 1799, Boulton & Watt constructed a heating apparatus in Lee's factory, at Manchester, in which the steam was conducted through cast-iron pipes, which also served as supports to the building.

This authority states as follows:

"Heating by *heated air* conveyed in caliducts is much older, being found in the hypocausts of the ancient Romans and the palaces of the Spanish Saracens. Heating by *hot water* is older than steam heating, and probably originated with Bonnemain, in 1777, in which the different stories were traversed by pipes leading the hot water upwards *from* the boiler, and the colder current by a return pipe *to* the boiler."

It is well known that the *distillation* of liquids and other substances has long been effected by passing into them *hot steam* through a tube, usually arranged in a worm coiled within the still, instead of the application of heat from the

outside of the still. (Ure's Dictionary of Arts, Manufactures, and Mines, vol. 2, p. 51.)

Duplais, in his standard treatise on the *Manufacture and Distillation of Alcoholic Liquors*, says:

"The heating (by steam) of liquids or materials to be distilled is effected by several methods. When, without inconvenience, they can be mixed with water, the steam is admitted directly by *injection*. This is used for semi-fluid substances, or for the distillation of substances in the large, Belgian or column stills. But generally, with the simple or continuous stills, arranged by Derosne, Egrot, &c., rectifying stills, &c., the liquids are heated by *conduction from the steam; that is to say, by causing a current of steam to circulate through a tube usually arranged in a coil.* Or the steam may be admitted into a jacket (or envelope) surrounding the still, or into a double bottom; these last are used only by the spirit distiller." (Duplais. By Dr. McKennie, p. 85.)

The Encyclopædia Britannica (article Distillation) states:

"All varieties of distillatory apparatus resolve themselves under three heads: 1st, stills heated and worked by the direct application of the heat of a fire; 2d, stills worked by the action of steam blown direct into the alcoholic solution from the steam-heater; 3d, *stills heated by steam passing in coiled pipes through the alcoholic solution to be acted upon.*"

The Court will take notice of these facts of science, as stated in the authorities cited upon the subject. (Brown *v.* Piper, 91 U. S., 43.)

Evidence of the state of the art and of analogous arts, is admissible always in patent causes, at law, without special notice, and in equity without special averment in the answer, to show what was old and in general use at the time of the alleged invention, and to aid the Court in the construction of the patent. (Ib., 41; Grier *v.* Wilt, 120 U. S., 429.)

(*b*) The testimony on the part of the defendants, in this cause, shows that the method or process of heating liquids

for purposes of distillation, by steam passing in pipes in the containing vessels, as above described, was in common use in this country and Europe long before Searle's patent.

It also proves that the heating of liquids and other substances was effected, for various *other* purposes and objects in the useful arts, by means of steam circulating in coils of pipe in the vessels containing the materials to be acted upon by heat, years before the date of that patent.

And there can be very little doubt, under the testimony of Mr. Sanders (*infra*), that "sherry" was manufactured in New York, by steam heat applied to wine through copper coils placed in tanks containing the wine, long before Searle's patent was issued. (Testimony for defendants: Henry Sanders, Rec., pp. 181–191; John Wieland, Ib., pp. 191, 192; Henry Voorman, Ib., pp. 193–195; James M. Curtis, Ib., p. 196.)

HENRY SANDERS, a coppersmith, stated that he had been in the business since 1844, in Germany and this country; that he worked in the city of New York between 1855 and 1863, when he went to San Francisco; and that he made the copper coils used by the defendants in their tanks. (Rec., pp. 174, 176, 177.)

He testified that such coils, to his knowledge, had been in use for thirty-five or forty years, for the purpose of heating liquids in tanks by means of steam. (Ibid.)

He stated that between 1855 and 1860 it was a common thing for him to make such coils, in New York, for heating spirits, wine, water, and other liquids, in copper stills and wooden tanks, by means of steam passing through the coils. (Rec., pp. 181, 182, 190.)

He also made similar coils, while working in New York, for packing companies, who used them for *cooking preserves* by steam heat. (Ib., pp. 189, 190.)

He said, further, that somewhere between 1855 and 1860, in New York, he had made copper coils for the firm

of Hoffman and Curtis, who had a distillery and "*sherry house*," and made "*sherry wine*," and that they applied heat through those coils to the wine in tanks.

He stated that he had drunk some of the "sherry," and that he believed that the wine was not "*boiled*" in the tanks. (Rec., pp. 184, 185, 190.)

Mr. Sanders said that he had made copper coils for heating liquids for nearly all the wineries, distilleries, and breweries in San Francisco. (Ib., pp. 182, 190.)

The witness further stated that he had made such coils ("the same old thing") in Germany, before he came to this country, and that they were used there for boiling purposes—heating liquids. (Rec., p. 183.)

JOHN WIELAND, a brewer since 1855, testified that for about twenty-five years he had used, in his brewery, in San Francisco, a copper coil for heating water in a closed tub by exhaust steam. (Rec., pp. 191, 192.)

HENRY VOORMAN, a distiller in San Francisco, stated that he used copper coils for heating high wines, and that he knew that the method of heating such wines by steam passing through coils was in use in New York as long ago as March, 1865. (Rec., p. 193.)

JAMES M. CURTIS, who was in the wine business in San Francisco, and extensively engaged in study and experimentation in regard to treating wines by heat, also testified that he was familiar with the use of copper coils in distilleries for the purpose of heating liquids by steam, as described by Mr. Sanders. He saw such coils in use in San Francisco, in 1866, for running over alcohol. (Rec., pp. 195, 196.)

3. The testimony of Mr. Curtis, who was an expert associated with Searle in his operations, shows that nothing new in respect to curing or ripening wine by heat was dis-

closed in Searle's patent; that the method of heating wine by steam, described in the patent, produced no new result or effect different in character from that attained by heating wine by the *Estufa* or hot-air process; and that the supposed special advantages claimed in the patent, for the method of heating wine for the purpose of ripening or "ageing" it therein described, are without foundation in fact. (Curtis, Rec., pp. 195–205.)

Mr. Curtis was asked whether there was anything new in the Searle patent so far as ripening wines by heat is concerned; and he said, "*nothing new whatever.*" (Rec., p. 201.)

He stated that, in his opinion, the application of the heat to the wine itself, in the mode described in the patent, had *no* effect upon the wine different from the effect of the heat as applied by the *Estufa* or hot-air process; that there is no chemical or other change produced in the wine itself, when heated in the mode indicated in the patent, that is not *also* produced by the old processes; and that in *all* processes of long heating, though not of instantaneous heating, the chemical action or effect of heat upon the wine is the same. (Rec., p. 214.)

He stated that in order to use the Searle method successfully, a person would have to know what *kind* of wine to use (Ib., p. 212) and what degree of heat to employ, and that "*any person taking that patent and going to work would probably spoil nine gallons out of ten.*" (Rec., p. 211, fol. 516.)

He was asked as follows:

"Could any person of ordinary intelligence and ordinary skill in the manufacture of wines at the date of this patent, in 1865, take the patent and, from the information therein contained, make wine successfully—good salable wine?

"A. No. We made many failures for many years. Mr. Searle's second experiment (in 1867) was the one where I bought the wine for vinegar purposes, was a total failure." (Rec., pp. 211, 204.)

The witness testified that, after the requisite amount of heat is obtained, the Searle process does not *shorten* the time required for ripening wine (p. 199); that casks of equal size would probably be about equally affected by the heat in steam heating and heating in ovens or *Estufas* (p. 201); that so far as the taste of the casks is concerned, a bad taste is as likely to come from the wood, if unseasoned, or the casks contained a bad or musty taste, in the one process as in the other (p. 201); that he had never seen any wine successfully ripened by *steam heating* in *six weeks;* that the usual time employed, by that process, is about *three months;* and that in the *Estufa* process, the time employed for commercial purposes is about the same. (Rec., p. 202.)

There is no economy of time in the Searle method. (Rec., p. 200.)

The patent declared that "the time required to perfect the operation of ripening wine by this process is about *six weeks.*"

On that subject Mr. Curtis testified as follows:

Q. 34. Did you ever ripen any wine in six weeks?
A. No, sir.
Q. 35. Can it be done successfully and practically?
A. I think not. I have never seen any wine that would be sufficiently ripened in six weeks.
Q. 36. Did you or Mr. Searle, while operating together, ever cure or ripen any wine in six weeks?
A. No, sir. (Rec., p. 202.)

He stated that Searle did not know, at the time he got his patent, what degree of heat was necessary to be applied by means of his process to make it practically successful; but that from experiments made by him (Curtis) and Searle together, after 1872, they concluded, though the matter was not yet fully settled, that the beneficial temperature was from 130° to 135°. (Rec., pp. 208, 209, 210.)

Mr. Curtis testified that "some difference in *flavor* is produced, and a greater degree of *perfection* can be ob-

tained, in a baking room, by the *Estufa* process, than by a steam-heating. *By steam-heating after a certain length of time no better flavor can be derived; but in a heating room the wine, after arriving a certain stage, will improve still further with the continuation of the heat.* It sometimes continues two years." (Rec., p. 202.)

In regard to the alleged waste by evaporation, &c., in the *Estufa* process, he stated that it depended on the quality of the casks used, and that parties who were then baking in ovens were using some of the same casks year after year (Rec. p. 201); but he said, "it is supposed by many, and I myself am of opinion, that the evaporation is actually *no loss*, and that it enhances generally the quality of the wine." (Rec., p. 205.)

So far as the quality of the wine made by the so-called Searle process is concerned, Mr. Curtis said that "a person having knowledge of what wines were proper to heat by the old process, selecting such wines, and heating them by this process as he would in the other, would probably make as good wine by this process as he would by the other." (Rec. p. 212.)

4. It is respectfully submitted, upon the presentation thus made, that the patent under consideration is within and governed by, and must be held void under, the rule so often declared from this bench, that where the principle and substance of the claim of a supposed inventor belong to the general domain of knowledge and science, or where the claim applies an old process or machine to a similar or analogous occasion, or to a similar or analogous subject, with no change in the manner of applying it, and no result substantially distinct in its nature, although the new form of result has not before been contemplated, the patent cannot be sustained. (Brown *v.* Piper, 91 U. S., 37; R. R. Co. *v.* Locomotive Trust Co., 110 Ib., 490; Blake *v.* San Francisco, 113 Ib., 683; Hollister *v.* Manufacturing

Co., Ib., 59; Thompson *v.* Boisselier, 114 U. S., 1; Miller *v.* Foree, 116 Ib., 27; Yale Lock Co. *v.* Sargent, 117 Ib., 554; Gardner *v.* Herz, 118 Ib., 180; Holder Co. *v.* Ferguson, 119 Ib., 335; Grier *v.* Wilt, 120 Ib., 429; Heating Co. *v.* Burtis, 121 Ib., 294.)

Even if Searle was the first person to use steam heat, in the manner described in his patent, for the purpose of ripening or "ageing" wine, which, to say the least, is extremely doubtful under the testimony of Mr. Sanders (*supra*), the state of the arts and the industries of mankind, at the time he applied for his patent, left no ground or warrant whatever for its issue.

At a time when one of the commonest methods of heating liquids and other substances, was to introduce heat by steam to the materials themselves, by means of coils of pipe in the containing vessels, there could be no valid patent for the application of that process or method of heating liquids to the heating of wine for the particular purpose of ripening or "ageing" it.

The process or mode of heating liquids referred to, at the time this patent was granted, was in the common knowledge and use of the public, and the public had the right to employ it in any usual way for any purpose or use for which it might be desired to apply it, and no one could legally get a monopoly of the right to so employ it for any particular use or purpose to which it might be applicable or adapted. (Blake *v.* San Francisco, 113 U. S., 683; Brown *v.* Piper, 91 U. S., 41.)

In *Blake* v. *San Francisco* this Court said:

"Where the public has acquired in any way the right to use a machine or device for a particular purpose, it has the right to use it for *all* the like purposes to which it can be applied, and no one can take out a patent to cover the application of the device to a similar purpose."

This principle, the Court said, is a corollary of the rule laid down in *Pennsylvania R. R. Co.* v. *Locomotive Truck*

Co. (110 U. S., 490), "that the application of an old process, or machine, to a similar or analogous subject, with no change in the manner of application, and no result substantially distinct in its nature, will not sustain a patent, even if the new form of result has not before been contemplated."

The application of the old and well-known process of heating liquids by steam, in the manner referred to, to the particular purpose or object of ripening or "ageing" wines, was simply a new *occasion* for the use of that old method of heating liquids, in a manner for which it was before adapted, which did not constitute a case that could be protected by letters patent, according to the principles declared by the English Courts, and by this Court in *Pennsylvania R. R. Co.* v. *Locomotive Truck Co.* (110 U. S., 490), and reaffirmed in *Miller* v. *Foree* (116 U. S., 27) and other recent cases.

The application of that old method of heating liquids by steam, to the particular use or purpose described in this patent, introduced no new use of heat in the treatment or curing of wines, and involved no new principle of action, and no new mode of operation, and produced, indeed, no new result or effect as respects the wines themselves different in character from that attained by every other process of heating wines for the purpose of ripening or "ageing" them.

The method pursued by Searle in the treatment of wines, and which is described in his patent, cannot be said, therefore, to be a "new and improved process of imparting 'age' to wines," which was the valid subject of a patent under the law of the United States.

It is manifest that nothing whatever was disclosed by the Searle patent, which amounted to a discovery or invention, under the Constitution and statute, and that the patent was granted, therefore, without authority of law, and was void. (Thompson *v.* Boisselier, 114 U. S., 1, 11; Gardner *v.* Herz, 118 U. S,, 191.)

SECOND.

The Court below erred in adjudging that profits were made by the defendants by the use of the so-called Searle process.

1. It will be seen that, upon the theory of this case, maintained by the complainant before the Master, he should have reported, under the rule in *Mowry* v. *Whitney* (14 Wall., 651), that no profits, recoverable in the suit, were shown to have been made by defendants by using the so-called Searle process.

John Searle never sold a license for the use of his alleged invention, which was confined, until the latter part of 1877, to the treatment by the patentee of small quantities of wine at his residence.

In September, 1877, he made a written contract with one Isaac De Turk, by which he undertook to prepare 100,000 gallons of "sherry" a year, for fifteen cents a gallon, and covenanted, under a penalty of $15,000, not to manufacture wine for any one else. (Contract, Rec., pp. 218, 219.)

Searle died in 1879, and in 1880 his son, who was the business manager of his estate, sold all his tanks and apparatus to De Turk for about six cents a gallon for the *cooperage*, with the privilege of making sherry by Searle's method. (De Turk, Rec., pp. 60–64.)

Some time in 1881 the defendants, Dreyfus & Co., who were extensive and highly-respectable wine dealers and manufacturers in San Francisco, undertook to cure some wine by applying steam heat to it, through copper coils, in the manner which has been stated.

It was stipulated before the Master that the quantity of sherry wine cured by the defendants, by this process, in 1881 and 1882, to the expiration of the Searle patent, amounted to 48,000 gallons. (Rec., pp. 45, 144.)

The defendants had long used a process of their own for

making sherry, which consisted in adding to dry white wine certain other wines, sugar, oil of almonds, gelatine, or isinglass, and which cost them, exclusive of the raw wine, at the rate of two and a half cents a gallon.

They made by this process as good and as saleable California sherry as they were able to make by the so-called Searle process. (See Testimony of Mr. Dreyfus, Rec., pp. 119, 141.)

The complainant maintained before the Master, that the *Estufa*, or hot-air, process, was to be taken as the proper standard or basis of comparison for determining the question of profits or advantages derived by defendants from the use of the Searle method. (Rec., p. 68 *et seq.*)

The defendants set up, as the proper standard of comparison, in the case, their own process of treating or refining white wine for making sherry, or the old and well-known *casa de sol*, or hot-house, process for curing or "ageing" wines, each of which was cheaper than the Searle method, or the *Estufa* process, and quite as good in other respects as the Searle method for the purposes of the defendants, as wine manufactures and merchants. (Rec., pp. 100, 118.)

2. It will thus be seen, upon complainant's view or theory of the case, and under the rule of *Mowry* v. *Whitney*, that the burden was upon her to prove the *actual cost* to the defendants of making the 48,000 gallons of sherry by the so-called Searle process, and *also* what it *would have cost them* to produce the same wine by the *Estufa* process, and that without, and in the absence of, such proof, it was plainly the duty of the Master to report that no profits, recoverable by complainant, were shown to have been made by defendants by using the so-called Searle process in the manufacture of that wine. (Cawood Patent, 94 U. S., 710; R. R. Co., *v.* Turrill, 110 U. S., 302; Black *v.* Thorne, 111 U. S., 124; Truck Co. *v.* P. R. R. Co., 2 Fed. R., 679; Wetherill *v.* Zinc Co., I Bann. & Ard., 486.)

If the *Estufa* process was the only one, open to defendants, adequate to enable them to obtain a result as beneficial as they obtained by the so-called Searle process, (which the defendants deny,) the measure of the advantage gained by using the latter process was the difference in the actual cost of production, if any, between the two processes; and unless that was proved, complainant made out no case before the Master.

3. The complainant, however, adduced no proof before the Master of the cost to the defendants of producing the 48,000 gallons of wine in question, and the fact is not found by the Master in his report; nor did the evidence before the Master establish what it would have cost them to cure the same wine by the *Estufa* process.

The general testimony given by the witnesses, De Turk and Scott, with reference to the *Estufa* process and its cost, the Master himself thought, had little value, "as De Turk testified in that regard from information, and Scott's was a first experience in a business altogether new to him, and, therefore, largely in the nature of an experiment." (Master's Report, Rec., p. 19, fol. 48.)

But those witness did not profess to say, nor were they asked, what it would have cost the defendants to make the wine in question by that process; and, as we have said, the fact was not proved by the complainant before the Master. (De Turk, Rec. p. 70; Scott, p. 94.)

THIRD.

The Court below should have adjudged that no profits were made by the defendants by using the so-called Searle process.

1. The testimony for the defendants before the Master established affirmatively the fact, that *no* advantages whatever were gained or derived by them from using that

method in the manufacture of the 48,000 gallons of wine in question; and the Master should have reported, and the Court should have adjudged, that no *profits* were made by the defendants in respect to that wine.

The proper standard of comparison, in the case, upon the matter of "profits," was the defendants' process for making sherry; and the testimony showed that, according to that standard, the defendants made no savings, and probably sustained a loss, in and by the manufacture of the 48,000 gallons of wine by the so-called Searle method.

The Master thought that the defendants' process could not be said to produce, as compared with the Searle method, an equally beneficial result; but in this conclusion he erred, according to the uncontradicted testimony on the part of the defendants.

If *their* sherry commanded the same price, in the market, as the sherry they made by Searle's method, and they had as good a market for one wine as the other, and it costs less to make *their* wine than it cost them to manufacture "Searle's sherry," it is plain that their process enabled them to obtain a result "equally beneficial," at least, with that of the patented process, within the meaning of the rule in *Mowry* v. *Whitney*.

2. The testimony of Mr. Dreyfus before the Master proved that the defendants were able thus to obtain, from the employment of their own process, a result as beneficial as they got from the use of the patented process of Searle.

He stated that defendants made and sold, from 1876 to 1880, about 50,000 gallons of their sherry a year; that they made and sold as much of their sherry after as before they used Searle's method; that there was no perceptible difference between the wines; *that they found as good a market for their sherry as for Searle's; and that their sherry sold for as much in the market as the wine made by Searle's method.* (Benj. Dreyfus, Rec., pp, 119, 128, 141.)

The defendants' process occupied about ten days, and the cost, exclusive of the raw wine, was from two and a-half to three cents a gallon (Rec., p. 119), which was cheaper than the cost of the Searle method. (P. 129.)

The lowest cost assigned to Searle's process was about three cents a gallon. (De Turk, Rec., p. 84.)

It is clear, therefore, from this testimony, that the use by the defendants of the so-called Searle process in the manufacture of the 48,000 gallons of wine referred to, contributed nothing to the *gains* of the defendants in their business, and that they derived no advantages from the use of that process, in the manufacture of that wine, beyond what they would have derived from the manufacture of the same amount of wine by their own method.

We have nothing to do with any question as to the intrinsic quality or merits of the two kinds of "sherry," as articles of manufacture.

All these California sherries are merely *imitations* of "sherry," and the object of the various processes of treating the raw white wine, whether by heat or otherwise, is simply to impart to it a "*flavor resembling sherry.*" (Curtis, Rec., pp. 197, 199.)

FOURTH.

The Court below erred in adjudging that the profits made by the defendants in respect to the 48,000 gallons of wine cured by the so-called Searle process, were 6.77 cents per gallon, amounting to $3,249.66, and in decreeing that amount to the complainant.

1. It will be seen from the Master's report that he purported to estimate and measure the alleged "profits, gains and advantages" of the defendants in respect to the 48,000 gallons of wine, by what he considered the "value of the patented process," as between Searle and De Turk,

under the terms of their contract of September, 1877, above referred to. The Court below erroneously affirmed the correctness of the principle adopted and applied by the Master in his report.

The Master said: "By this contract it was agreed that for the price of fifteen cents a gallon Searle should convert De Turk's white wine into sherry by the patented process; and if it is possible to determine how much of that price was *consideration for the use of the process*, a fair basis may be had for the purposes of this accounting." (Rec., p. 161, fol. 41.)

He estimated that of that price, 6.77 cents represented the amount paid by De Turk for the use of the process, and then concluded that that sum was the "*value of the patented process upon each gallon of wine produced*" under the De Turk contract. (Rec., p. 18, fol. 46.)

The Master then charged the defendants with that sum upon each gallon of wine made by them, as "*profits*" derived by them from the use of the patented process, and awarded the aggregate amount against the defendants, not as "damages," but as "profits, gains and advantages." (Rec., p. 20, fol. 50.)

It is necessary only to state the conclusion and action of the Master to expose their error.

The "value of the patented process," so-called, under the De Turk contract, was no measure of the profits, if any, of defendants, and could not be resorted to as evidence upon that subject.

The profits recoverable in equity for the infringement of a patent are those only which defendants "actually realized." (Livingston *v.* Woodworth, 15 How., 546.)

2. It is equally certain that the consideration paid by De Turk to Searle, for the use of the patented process, under the contract mentioned, if it could have been ascertained, was no legal or proper measure of the "damages,"

if any, sustained by Searle's estate on account of the use of that process by defendants.

That amount was not a license fee, nor was it paid as a license fee; and if it had been, the rule is well settled that the sale of a single license is not sufficient to establish a royalty.

The transaction between De Turk and Searle was, as respects the defendants, *res inter alios acta*, and they could not be bound or affected by it in any manner or for any purpose whatever in this suit.

It was an *exclusive* contract, and the price agreed to be paid by De Turk to Searle, for making "sherry" for him, was no doubt based upon that consideration.

3. This Court has said, "actual damages must be actually proved, and cannot be assumed as a legal inference from any facts which amount not to actual proof of the fact." (Seymour *v.* McCormick, 20 How., 198; N. Y. *v.* Ransom, 23 How., 487.)

By the *Revised Statutes*, secs. 4919 and 4921, the damages recoverable in an action for the infringement of letters patent, are "actual damages" alone.

There was no evidence, before the Master, to prove, or warrant the conclusion, that the actual pecuniary injury or loss—the "actual damages"—sustained by Searle's estate, by the use of the patented process by defendants, amounted to 6.77 cents per gallon on the wine made by that process; but the evidence, in the case, on the contrary, showed that the estate did not suffer any such injury or loss, and, in fact, sustained no injury or loss—no "actual damages"—whatever by the alleged infringement of defendants.

After the death of Searle, in 1879, all the tanks and apparatus used by him in making "sherry" for De Turk, were sold to De Turk for six and a half cents a gallon for the *cooperage*, and his son, who managed the estate for the complain-

ant, authorized De Turk to use the patented process without compensation to the estate, which he did, during the life of the patent, without interference by the complainant. (De Turk, Rec., pp. 61, 63; Jas. Searle, Ib., p. 85; Sophia Searle, Ib., p. 143.)

The present suit was evidently an attempted speculation of the son. (Rec., pp. 88, 90.)

Under such circumstances, it cannot be pretended that Searle's estate suffered pecuniary injury or loss by the use of the patented process by the defendants, or is entitled to recover any amount as actual damages from the defendants in this suit.

FIFTH.

It is respectfully submitted that the decree of the Court below should be reversed, and that the bill should be directed to be dismissed, with costs.

J. HUBLEY ASHTON,
Of Counsel for Appellants.

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Supreme Court, U. S.
FILED.
DEC 16 1887
JAMES H. McKENNEY,
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In the Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 118.

BENJAMIN DREYFUS, EMANUEL GOLDSTEIN, JACOB FROWENFELD AND JOHN J. WEGELIN, COPARTNERS, DOING BUSINESS AS B. DREYFUS & CO., APPELLANTS,

vs.

SOPHIA SEARLE, EXECUTRIX OF JOHN SEARLE, DECEASED.

BRIEF FOR APPELLEE.

LAW REPORTER PRINT, 503 E St. N. W.

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SOPHIA SEARLE, EXECUTRIX OF JOHN SEARLE, DECEASED.

BRIEF FOR APPELLEE.

This appeal is taken from the final decree of the Circuit Court of the United States for the District of California, by which the sum of $3,249.60, with interest from the 22d day of May, 1883, and the costs of suit were decreed to be paid by the appellants to the appellee, by reason of the infringement by the appellants of Letters Patent No. 48,728, issued to John Searle (since deceased) July 11, 1865, for a new and improved process for imparting age to wines and liquors. The bill was filed

December 21, 1881, and prays for an injunction and account. The letters patent expired July 11, 1882. The appellants filed their original answer to the bill April 20, 1882, and their amended answer November 14, 1882. The answer avers that defendants *have never seen* the letters patent, but denies the infringement, and avers that the invention was well known and in public use in San Francisco, Cal., for more than two years prior to the date of the application of John Searle for letters patent, and one John Wieland, one Henry Ahrens, and one Henry Vrooman of San Francisco, are specified as having made such prior public use.

The specification accompanying the letters patent states that John Searle had invented a new and improved process for imparting age to wines and liquors, shortening the time for ripening them, without deteriorating their flavor by the use of steam. And after reciting several advantages of his process over the process of ageing wines by heating them in casks or pipes contained in estufas or large ovens, it describes his process as follows: "I use casks or tanks (as the case may be) for holding the wine. * * * Through each of these casks or tanks near the base I pass an iron or metallic pipe (copper is preferable) of about one inch, and open at its end. These pipes connect with a main steam pipe, and can be closed and the steam shut off should the heat become too great for the wine, by means of a stop-cock attached to each of the pipes."

The degrees of heat are said to vary from 100 to 140, and the time required to perfect the operation of ripening by this process is said to be about six weeks, but left to the knowledge and discretion of the user. It claims "introducing the heat by steam or otherwise to the wine itself, by means of metallic pipes or chambers passing through the casks or vessel substantially as set forth."

By stipulation it appears that John Searle died May 12, 1879, testate; that complainant is his sole devisee, and duly qualified as executrix; and that the defendants are co-partners under the firm name and style of B. Dreyfus & Co.

The testimony clearly shows that the defendants used the process described in the complainant's letters patent and were guilty of infringement.

James J. Searle (Record, pp. 156, 157), says that he went to the defendants' wine vaults in October or November, 1881, for the purpose of making a demand upon the firm; that he saw Mr. Frowenfeld, one of the firm, who told him that he couldn't do anything about it; that if he wanted to see whether there was any infringement he was at liberty to go in and look at the tank. He saw the tanks, but they were full of wine and he could not see the arrangement of the steam pipe inside of the tank, but it was substantially the same as that used by Searle. The exhaust pipe, instead of coming up through the top of the tank, came back almost alongside of the supply pipe of steam. He had seen the pipe before it was put in at Sanders & Co. Frowenfeld did not deny that they were infringing the patent. "He said in effect that he had nothing to say about it."

Mr. Frowenfeld, one of the defendants examined as a witness for complainant, says (p. 172, Record), that there are tanks used by the firm in which steam heat is applied to wine by means of a coil of pipe contained within the tank through which the steam passes. That they introduced heat to the wine contained in the tanks "for the purpose of bringing out certain qualities in certain wines" (p. 173, Record). That the pipe does not terminate within the tank, and the wine is brought in contact with the heated pipe.

Henry Sanders, a witness for complainant (p. 174–5, Record), says that he made the coiled copper pipe for six

tanks for the defendants; that the coiled pipe was arranged on the bottom of the tanks, and the inlet and outlet pipe were side by side.

Defences.

Besides the denial of infringement, the only defence set up in the answer is that the invention was well known and in public use in San Francisco for more than two years prior to the application for letters patent, by John Weiland, Henry Ahrens and Henry Vrooman.

John Wieland (p. 191–2 record) testifies that he has been using for about twenty-five years a large tank having a copper coil in it, in which he uses exhaust steam for the purpose of heating water in the tank, and that he uses the tank of heated water for washing barrels.

Henry Vrooman (p. 193 record) testifies that he used in 1865, and has used since, as a distiller, a copper kettle having within it a copper coil of pipe for the purpose of evolving alcoholic vapors, using both escape steam and direct steam, and continuing the application of heat until all the alcohol in the vessel is evaporated.

Henry Ahrens (p. 192 Record) testifies that he runs a brewery, and he don't know anything about the use of copper coils for heating purposes.

The attempt was made to prove by James M. Curtis, a witness in behalf of the defendants, a prior public use of the invention by others, but his knowledge extended only to the use of heated copper coils in stills subsequent to the date of the letters patent. His testimony upon that subject was incompetent also, because no notice of it was given in the answer.

The only evidence of alleged public use more than two years prior to the application for patent, is that of John Wieland who heated water to wash barrels by means of coiled pipe in a large tank.

No attempt has been made to establish the prior use of the process for treating wines described and claimed in the letters patent. The fact that a similar device has been before used for the purpose of boiling water or any other liquid does not invalidate the patent which is for the process, and not for the mechanical devices used for carrying out the process.

"A machine may be used and the product or manufacture proceeding from it may be old. In that case the former would be patentable and the latter not. The machine may be substantially old and the product new. In that event the latter and not the former would be patentable."

"The same remarks apply to processes and their results. Patentability may exist as to either, neither or both according to the fact of novelty or the opposite. The patentability or the issuing of a patent as to one in no wise affects the rights of the inventor or discoverer as to the other." Rubber Company *vs.* Goodyear, 9 Wall., 788.

"A process is a mode of treatment of certain materials to produce a given result. It is an act or series of acts performed upon the subject-matter to be transformed and reduced to a different state or thing. If new and useful, it is just as patentable as a piece of machinery. In the language of the patent-law it is an art. The machinery pointed out as suitable to perform the process may or may not be new or patenable, whilst the process itself may be altogether new and produce an entirely new result. The process requires that certain things should be done with certain substances and in a certain order, but the tools to be used in doing this may be of secondary consequence."

Cochrane *vs.* Deener, 94 U. S., 788.

Tilghman *vs.* Proctor, 102 U. S., 722.

"It is quite obvious that a manufacture or a product of a process may be no novelty, while, at the same time, the process or agency by which it is produced may be both new and useful; a great improvement on any previously known process, and therefore patentable as such."

Am. Wood Paper Co. *vs.* Fiber Disintegrating Co., 23 Wall., 566.

It is not claimed that the inventor was the first to apply artificial heat to wine for the purpose of ripening it, or giving it the effect of age. He states explicitly in his specification that for many years wines had been so treated "through the medium of 'estufas'" or large ovens having flues by which they are heated. These "estufas" are filled with wines and spirits in casks or pipes, and are kept at a proper heat until the contents of the casks show the desired age through the staves."

He does claim that he is the original and first inventor of the process of ripening or ageing wines by introducing heat into the body of the liquor by means of metallic pipes or chambers passing through and within the cask or vessel containing the same.

Lack of Utility.

Although there is no foundation for such defence made in the answer, the defendants attempted to show by their witness, James M. Curtis, a lack of utility in the invention, and that it failed to present advantages over the old process of heating in estufas. James M. Curtis says, that he never practiced ripening wine by the old process, and that all he knew about it was what he had heard from others and had learned from books, (pp. 202, 3, Record).

That he had no experience with the Searle process un-

til 1868, and that he never personally manipulated or treated wines by Searle's process. What he knew about it was what Searle told him and what he learned from testing samples of wine brought to him by Searle, (p. 203,. Record). He says, however, that the larger the casks the longer the time required to treat the wine by the *old* process; that he does not think it would be practicable to treat a large body of wine in a large cask by the old process. That it would be cheaper to treat the same quantity of wine in one large cask than in several small casks; that there would be larger waste by the old process, because larger evaporating surface. (p. 205, Record). That the only economy of *time* is the economy gained in first raising the temperature up to the required point—say, one hundred and thirty degrees. By the Searle process this can be done very quickly. By the process of heating in vaults or in heated rooms where the wine is contained in larger or smaller casks a greater time is required. (P. 199, Record).

That Pettinelli, by the baking process, in San Francisco in 1865, heated in small casks, a great deal in barrels. In the Island of Madeira, where this process of heating wine originated, it is usually heated in pots of about one hundred and eight gallons. Searle could operate with a cask of *any* size on his principle. If he could operate with a cask of one thousand gallons, he could operate ~~operate~~ with a cask of one hundred thousand gallons. In the old process it is unquestionably better to use small casks, because the area, the surface exposed to the temperature, is greater in proportion to the contact. That there is economy of heat and fuel in the Searle process. (P. 200, Record). That the Searle process is more economical. That it possessed several advantages over what had been done before. (P. 208, Record).

Isaac de Turk, a witness for complainant, says that he had been engaged in the business of wine making for

twenty years, and for the last few years his business has run to about three hundred thousand gallons per year; that he is familiar with the Searle patented process; that it is more economical than the furnace process, as to the saving of time or fuel; that the shrinkage or loss in the manufacture of plain wines into the sherry by the Searle process is from 15 to 20 per cent. less. (P. 165, Record). That the furnace process is very injurious to cooperage, and often the cooperage is destroyed in one single process of manufacturing one lot of sherry or damaged so much that it is almost useless, whilst the Searle process does not affect the cooperage materially. (P. 166, Record).

Insufficient Description.

Another attempted defence *not set up in the answer* is, that the specification is not sufficiently clear and exact to enable one skilled in the art to use the invention. This is not sustained by the proof. Both De Turk (p. 16, 47, Record) and Curtis (p. 212, Record) testify that they, and it is perfectly apparent other persons skilled in the art, could take the specification accompanying the Searle letters patent and successfully use and practice the invention.

The defence that the patent is defective, because it is impossible to make merc~~antile~~ hantable goods according to the directions contained in it will not be entertained where it is not set up in the answer.

Providence Rubber Co. *vs.* Goodyear, 9 Wall., 788.

Can an insufficient description be set up in the answer without alleging an intent to deceive the public?

Loom Co. *vs.* Higgins, 105 U. S., 587.

The patentee, Searle, treated a lot of wine for the defendants by his process, and its *utility* was so successfully

demonstrated, that they, without license, went to the expense of constructing six large tanks with coils of steam pipe, and demonstrated its utility still further by successfully treating a large quantity of wine therein by the patented process. It does not appear that the defendants experienced any difficulty in making use of the process arising from the *insufficient description* contained in the specification.

Want of Jurisdiction in Equity.

In the court below it was claimed that inasmuch as the patent expired pending the proceeding and no injunction could issue, that the right to an accounting is incidental to and dependent upon the right to injunction, and falls with it.

Conceding that the point was directly decided in Imlay *vs.* The Railroad Co., 4 Blatchf., 227, the defendants yet assert that that case was decided under the act of 1836, and that under the provisions of the Revised Statutes, the jurisdiction and power of a court of equity is more limited. This court has held in Cochrane *vs.* Deener, 94 U. S., 784, that the circuit courts, under sec. 629, Rev. Stat., having jurisdiction "of all suits at law or in equity arising under the patent or copyright laws of the United States," and referring to sec. 4921 and others, that "the grant of jurisdiction (in equity) is as broad and general as it could well be, and the mode of exercising it is prescribed in the same terms as in previous statutes."

The proposition is without foundation, and is untenable.

Damages.

The defendants' exceptions to the report of the master were properly overruled. The finding of the master was

more favorable to the defendants than they had reason to expect. He took the case of Maury *vs.* Whitney, 14 Wall., 652, as his guide in the accounting, and his report evidences the most careful effort to ascertain mathematically and justly the profits, gains or advantages which the defendants received or made by the use of the patented process. This he did without any data or light received from the defendants, who appeared to have *kept no books* indicating the amount of wine treated by this process, or of the purchase of the raw wine so treated, or of the sale of the treated article. The defendants, or their agents, either could not or would not give any definite information upon the subject.

"The conduct of the defendants in this respect has not been such as to commend them to a court of equity. Under the circumstances every doubt and difficulty should be resolved against them."

Rubber Co. *vs.* Goodyear, 9 Wall., 803.

It is respectfully submitted that the decree below should be affirmed.

A. C. BRADLEY,
W. J. NEWTON,
For Appellee.